SURVEY OF ILLINOIS LAW: CRIMINAL LAW

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I. INTRODUCTION

In 2015, the Illinois Supreme Court addressed a broad range of legal criminal issues in the 34 criminal opinions the court decided. Rather than presenting an in-depth analysis of all criminal cases during the past year, this article provides a general survey that highlights some of the most significant criminal cases decided by the Illinois Supreme Court. In doing so, this survey will examine various areas of criminal law, including the ever-evolving Aggravated Unlawful Use of a Weapon statute, the Juvenile Court Act, Fourth Amendment protections, and post-conviction proceedings. The purpose of this survey is to keep the criminal law practitioner up-to-date with the current trends and changes in Illinois case law. Some of the cases are recent decisions by the Illinois Supreme Court or cases the court has granted leave to appeal. With a few exceptions, this article includes cases decided between January and December 2015.

II. AGGRAVATED UNLAWFUL USE OF A WEAPON

A. *People v. Mosley*, 2015 IL 115872 and *In re Jordan G.*, 2015 IL 116834

1. People v. Mosley

Issues: Whether subsection 24-1.6(a)(3)(A) of the Aggravated Unlawful Use of a Weapon ("AUUW") statute (carrying an uncased, loaded, immediately accessible firearm), which was found unconstitutional in combination with subsection 24-1.6(a)(1) (carrying a firearm when not on his own land or in his own abode), was equally unconstitutional when combined with subsection 24-1.6(a)(2) (carrying a firearm on a public way).[1] Whether other aggravating factors in subsection 24-1.6(a)(3) are severable and enforceable.[2] Whether subsections 24-1.6 (a)(3)(C) (no valid

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1. People v. Mosley, 2015 IL 115872, ¶ 1.
2. *Id.* at ¶ 26.

FOID card) and 24-1.6(a)(3)(I) (person under 21 years of age) are constitutional as neither imposes a burden on conduct falling within the scope of the Second Amendment.[3]

In companion opinions, the Illinois Supreme Court in *People v. Mosley* and in *In re Jordan G.*[4] resolved numerous remaining questions left unanswered after the court's landmark ruling in *People v. Aguilar*.[5]

In *Mosley*, Chicago police received a call about a person with a gun at a local park.[6] The responding officers saw a group of children playing and a group of teenagers standing together.[7] The defendant, who was then 19 years of age, walked away when the officers approached and refused to stop when requested.[8] When officers pursued, defendant began to run, pulling a .32-caliber revolver out of his waistband and dropping it to the ground.[9] The weapon was recovered and found to be fully loaded with six live rounds and not enclosed in any type of gun case.[10] At the time of defendant's apprehension and arrest, he had not been issued a valid Firearm Owner Identification ("FOID") card.[11]

Following a bench trial, Mosley was found guilty of six counts of AUUW.[12] During post-trial proceedings, the circuit court became concerned about the constitutional validity of the involved statutes.[13] After the circuit court heard oral arguments addressing defendant's concerns, the circuit court entered its written order, finding that "the offense established by 720 ILCS 5/24-1.6(a)(1) & (a)(3)(A) & (C), and the punishment prescribed for the offense by 720 ILCS 5/24-1.6(d)(2), are unconstitutional based on the proportionate penalties clause of Article I, section 11 of the Illinois Constitution and the due process clause of Article I, section 2 of the Illinois Constitution."[14] The circuit court further found that "as to these provisions, the aggravated unlawful use of weapons statute is unconstitutional both on its face and as applied to the defendant because it cannot be reasonably construed in a manner that would preserve its validity."[15] The circuit court then proceeded to vacate defendant's convictions for AUUW and, instead, entered a conviction on the uncharged

3. *Id.* at ¶ 33.
4. In re Jordan G., 2015 IL 116834.
5. People v. Aguilar, 2013 IL 112116.
6. *Mosley*, 2015 IL 115872, ¶ 5.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at ¶ 7.
13. *Id.*
14. *Id.* at ¶ 8.
15. *Id.*

offense of unlawful use of a weapon.[16] Pursuant to Illinois Supreme Court Rule 603,[17] the State's appeal from the circuit court's finding of statutory unconstitutionality went directly to the Illinois Supreme Court.[18]

In a complex and detailed opinion, the supreme court in *Mosley* unanimously affirmed in part and reversed in part the circuit court's findings.[19] The supreme court first held that a portion of the circuit court's order constituted an impermissible advisory opinion, because it held that all of section 24-1.6(a) of the AUUW statute was unconstitutional even though several of the subsections were not at issue in the case.[20] The supreme court also clarified that the circuit court's actions were not an acquittal where the court found the defendant guilty of the charges brought by the State, but then vacated those charges for constitutional reasons.[21]

As to the merits of the case, the Illinois Supreme Court found that the offense found unconstitutional in *Aguilar* (720 ILCS 5/24-1.6(a)(3)(A), (a)(1) (carrying an uncased, loaded and immediately accessible firearm while in a vehicle or concealed on or about his or her person)), was equally unconstitutional when the alleged offender similarly carries a firearm on a public way in violation of 24-1.6(a)(3)(A), (a)(2).[22] Accordingly, the supreme court had to determine whether the remaining subsections of the AUUW continue to be viable, the supreme court found that the other aggravating factors in subsection 24-1.6(a)(3) are severable because they are capable of being executed wholly independently of the provisions previously found unconstitutional.[23] Thus, subsections 24-1.6(a)(3)(C) and 24-1.6(a)(3)(I) could be given effect even without the presence of subsection 24-1.6(a)(3)(A).[24] As to the constitutionality of subsections 24-1.6(a)(3)(C) (no valid FOID card) and 24-1.6(a)(3)(I) (person under 21 years old), the supreme court noted that the courts in both *Moore v. Madigan*[25] and *Aguilar* specifically provided that meaningful regulation was permissible under the Second Amendment, and that these statues were intended to provide meaningful regulation.[26] Therefore, the supreme court upheld the regulations in subsections 24-1.6(a)(3)(C) and 24-1.6(a)(3)(I).[27]

16. *Id.*
17. ILL SUP. CT. R. 603.
18. *Mosley*, 2015 IL 115872, ¶ 1.
19. *Id.* at ¶ 61.
20. *Id.* at ¶ 11.
21. *Id.* at ¶ 17.
22. *Id.* at ¶ 25.
23. *Id.* at ¶¶ 32–36.
24. *Id.*
25. Moore v. Madigan, 702 F. 3d 933, 941 (7th Cir. 2012).
26. *Moseley*, 2015 IL 115872, ¶¶ 32–36.
27. *Id.*

The supreme court also rejected Equal Protection and Due Process challenges brought by Mosley.[28] Specifically, the supreme court held that age is not a suspect class under the Second Amendment and age restrictions bear a rational relationship to the government's legitimate interest in protecting the public and the police.[29]

2. In re Jordan G.

As in *Mosley*, the supreme court in *In re Jordan G*. addressed several of the same issues, particularly whether subsections 24-1.6(a)(1), (a)(3)(A), and (a)(3)(C), and (a)(3)(I) of the AUUW statute are constitutional to the minor, Jordan G.[30] Here, Jordan G. was a 16-year old charged with AUUW violations under subsections 24-1.6(a)(1), (a)(3)(A), (a)(3)(C), and (a)(3)(I).[31] The circuit court dismissed the AUUW charges following the reasoning of *Moore v. Madigan*.[32]

On direct appeal, the Illinois Supreme Court followed its opinion in *Mosley*, holding that possession of a firearm by minors falls outside the scope of the Second Amendment and is subject to meaningful regulation.[33] Thus, the supreme court reversed the circuit court's finding that subsection 24-1.6(a)(3)(C) and 24-1.6(a)(3)(I) are unconstitutional, but upheld the circuit court's dismissal of subsection 24-1.6(a)(3)(A), in light of *Aguilar*.[34]

B. *People v. Burns*, 2015 IL 117387

Issue: Whether the Class 2 form of section 24-1.6(a)(1), (a)(3)(A), (d) of the aggravated unlawful use of a weapon statute (AUUW) violates the right to keep and bear arms, as guaranteed by the Second Amendment to the United States Constitution.[35]

In this case, the supreme court answered another question that was left unresolved in *People v. Aguilar*.[36] The AUUW statute allows for a higher-level felony charge if the offender has a prior felony conviction.[37] In *Aguilar*, the supreme court expressly limited its unconstitutional finding to the Class 4 form of the AUUW offense.[38] Thus, the *Aguilar* court did not

28. *Id*. at ¶¶ 39–44.
29. *Id*. at ¶ 42.
30. In re Jordan G., 2015 IL 116834, ¶ 3.
31. *Id*.
32. *Id*. at ¶¶ 4–6 (citing *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012)).
33. *Id*. at ¶ 24.
34. *Id*. at ¶ 30.
35. People v. Burns, 2015 IL 117387, ¶ 19.
36. *Id*. at ¶¶ 2-14.
37. *See* 720 ILL. COMP. STAT. 5/24-1.6 (2014).
38. *Burns*, 2015 IL 117387, ¶ 22. n. 3.

foreclose on the possibility that the Class 2 form of AUUW may remain enforceable despite declaring the elements of the offense unconstitutional.[39]

In this case, the defendant was convicted of AUUW based on the possession of an uncased, loaded and readily accessible firearm in a vehicle.[40] At sentencing, the State presented proof of defendant's prior felony conviction in order to enhance the classification of the offense from a Class 4 felony to a Class 2 felony.[41]

On appeal, the defendant argued that in light of the recent *Aguilar* decision, the appellate court should vacate his Class 2 felony conviction.[42] The appellate court disagreed and affirmed his conviction.[43] The appellate court said that, despite *Aguilar*, the challenged statute remained enforceable because felons (like this defendant) lack Second Amendment rights.[44]

In its opinion, the supreme court clarified *Aguilar*, finding that it was "inappropriate" to limit their ruling to the lesser offense provided in the statute.[45] Accordingly, the supreme court held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional, without limitation, because "[t]he offense, as enacted by the legislature, does not include as an element of the offense of the fact that the offender has a prior felony conviction."[46] Further, the supreme court added: "An unconstitutional statute does not 'become constitutional' simply because it is applied to a particular category of persons who could have been regulated, had the legislature seen fit to do so."[47] Accordingly, the supreme court vacated defendant's conviction and sentence for AUUW.[48]

C. *People v. McFadden*, 2014 IL App (1st) 102939, appeal allowed, No. 117424 (May 28, 2014), and *People v. Fields*, 2014 IL App (1st) 10311

1. People v. McFadden

Issue: Whether a defendant's conviction for unlawful possession or use of a weapon by a felon is properly vacated where the predicate felony offense, Class 4 AUUW, has been declared unconstitutional.[49]

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39. *Id.* at ¶¶ 21–22, 25.
40. *Id.* at ¶ 10.
41. *Id.* at ¶ 13.
42. *Id.* at ¶ 15.
43. *Id.* at ¶ 17.
44. *Id.*
45. *Id.* at ¶ 22.
46. *Id.* at ¶ 29.
47. *Id.*
48. *Id.* at ¶ 32.
49. People v. McFadden, 2014 IL App (1st) 102939, ¶ 36.

In *McFadden*, the defendant was convicted of armed robbery and unlawful use of a weapon by a felon ("UUW/F").[50] The parties stipulated that defendant had a prior Class 4 AUUW conviction that occurred several years prior.[51] Following a bench trial, defendant was sentenced to 29 years in prison on each armed robbery conviction, including a 15-year enhancement for carrying a firearm.[52]

On appeal, the defendant argued that under *Aguilar*, his conviction for UUW/F should be vacated because the underlying predicate felony of AUUW is void and unconstitutional.[53] He argued that the Illinois Supreme Court in *Aguilar* found that the Class 4 version of AUUW was unconstitutional, and therefore, the defendant's conviction for Class 4 AUUW was void.[54] The appellate court agreed with defendant that a void conviction for the Class 4 form of AUUW cannot now, or ever, serve as the predicate offense for any charge because when a statute is declared unconstitutional, it is void *ab initio*, or as though the law had never been passed.[55] Accordingly, the appellate court reasoned that State could not rely on the now-void AUUW conviction to serve as a predicate offense for UUW/F.[56] The appellate court held that without a valid predicate AUUW conviction, the State failed to prove an essential element of the UUW/F offense, and therefore, defendant's UUW/F conviction had to be vacated.[57] The appellate court also found that "because defendant's case is pending on direct appeal in this court . . . we cannot ignore *Aguilar*'s effects on his conviction for UUW by a felon."[58] The *McFadden* court refrained from "vacating defendant's [predicate] AUUW conviction . . . pursuant to *Aguilar*" and "decline[d] to address whether formal proceedings for collateral relief may be available to defendant to vacate his conviction in that [predicate] case."[59]

The State's appeal to the Illinois Supreme Court was granted.[60]

50. *Id.* at ¶ 1.
51. *Id.* at ¶ 5.
52. *Id.* at ¶ 1.
53. *Id.* at ¶¶ 2, 36.
54. *Id.* at ¶ 38.
55. *Id.* at ¶ 43
56. *Id.*
57. *Id.*
58. *Id.* at ¶ 41.
59. *Id.* at ¶ 44.
60. People v. McFadden, 2014 IL App (1st) 102939, *appeal docketed*, No. 117424 (Ill. Mar. 25, 2015).

2. People v. Fields, *2014 IL App (1st) 110311*

Issue: Whether a defendant's conviction for being an armed habitual criminal offender is properly vacated where the predicate felony offense, Class 4 AUUW, has been declared unconstitutional.[61]

Following a jury trial, defendant was convicted of armed robbery[62] and being an armed habitual criminal ("AHC")[63] for robbing a convenience store.[64] The trial court imposed a 21–year sentence for armed robbery, which included a 15–year enhancement for the use of a firearm, and a concurrent, 10–year sentence on the conviction of being an armed habitual criminal.[65]

On appeal, the defendant argued that his AHC conviction must be reversed in light of *Aguilar*, because his prior conviction for AUUW under section 24-1.6(a)(3)(A) is void under *Aguilar*.[66] He argued, therefore, the State could not rely on that conviction as a predicate offense for armed habitual criminal so that the State failed to prove an essential element of the offense of AHC.[67]

The appellate court agreed with defendant, stating:

> "[W]e cannot allow defendant's 2005 Class 4 AUUW conviction, which we now know is based on a statute that was found to be unconstitutional and void *ab initio* in *Aguilar*, to stand as a predicate offense for defendant's armed habitual criminal conviction, where the State is required to prove each element of the Class 4 AUUW beyond a reasonable doubt. A void conviction for the Class 4 form of AUUW found to be unconstitutional in *Aguilar* cannot now, nor can it ever, serve as a predicate offense for any charge. Because the issue was raised while defendant's appeal was pending, we are bound to apply *Aguilar* and vacate defendant's armed habitual criminal conviction because the State could not prove an element of the offense of armed habitual criminal through the use of a predicate felony conviction that is void *ab initio.*"[68]

Accordingly, the appellate court vacated the defendant's armed habitual criminal conviction. As in *McFadden*, the *Fields* court specifically considered the validity of the predicate felony in deciding the case on appeal, however, the appellate court stated that it would not issue collateral

61. People v. Fields, 2014 IL App (1st) 110311, ¶¶ 1, 46.
62. 720 ILL. COMP. STAT. 5/18-2(a)(2) (2008).
63. *Id.* at § 5/24-1.7(a).
64. *Fields*, 2014 IL App (1st) 110311, ¶¶ 1, 6.
65. *Id.* at ¶ 19.
66. *Id.* at ¶¶ 38–39.
67. *Id.*
68. *Id.* at ¶ 44.

findings as they relate to the predicate offense.[69] Both *McFadden* and *Fields* were decided prior to the Illinois Supreme Court decision in *Burns*, and therefore, the appellate courts only considered the effect that the Class 4 version of the AUUW statute found to be unconstitutional in *Aguilar* had on McFadden's and Fields' convictions.[70]

The Illinois Supreme Court denied leave to appeal.[71]

D. *People v. Williams*, 2015 IL 117470, and *People v. Schweihs*, 2015 IL 117789

1. People v. Williams

Issue: Whether the offense of AUUW based on the lack of a FOID card[72] violates the proportionate penalties clause of the Illinois Constitution[73] when compared to a violation under the Firearm Owner's Identification Card Act ("FOID Card Act").[74]

In two similar appeals, the Illinois Supreme Court in *People v. Williams* and *People v. Schweihs* held that the sections of the AUUW statute at issue were not identical to section of the FOID Card Act prohibiting a person from acquiring or possessing a firearm without having in his or her possession a firearm owner's identification card.[75] Therefore, the sentencing scheme for AUUW did not violate state constitution's proportionate penalties clause.[76]

In *Williams*, defendant was charged with AUUW because he was carrying a firearm outside his home and he did not have a valid FOID card.[77] Prior to trial, however, defendant moved for a finding that subsection 24-1.6(a)(3)(C) of the AUUW statute is unconstitutional because it contained the same elements as the crime of failing to obtain a FOID card, yet a conviction under the AUUW statute carried a much harsher penalty.[78] The circuit court granted the motion and declared the AUUW statute to be unconstitutional under the Proportionate Penalties Clause of

69. *Id*. at ¶ 45; People v. McFadden, 2014 IL App (1st) 102939, ¶ 44 ("[W]e are not vacating defendant's [predicate] AUUW conviction . . . pursuant to *Aguilar*. We decline to address whether formal proceedings for collateral relief may be available to defendant to vacate his 2005 felony UUW conviction.").
70. People v. McGee, 2016 IL App (1st) 141013, ¶ 19.
71. People v. Fields, 2014 IL 117457.
72. 720 ILL. COMP. STAT. 5/24-1.6(a)(1), (a)(2), (a)(3)(C) (2012).
73. IL CONST. 1970, art. 1, § 11.
74. People v. Williams, 2015 IL 117470, ¶ 1; 430 ILL. COMP. STAT. 65/2 (2012).
75. *Williams*, 2015 IL 117470, ¶ 14; People v. Schweihs, 2015 IL 117789, ¶ 14.
76. *Williams*, 2015 IL 117470, ¶ 14.
77. *Id*. at ¶ 3.
78. *Id*. at ¶ 4.

the Illinois Constitution.[79] The State directly appealed to the Illinois Supreme Court pursuant to Illinois Supreme Court Rule 603.[80]

The *Williams* court unanimously reversed, rejecting the proportionate penalties challenge.[81] In its opinion, the supreme court applied the identical elements test that was first used in 1990, to determine whether if the different offenses contain identical elements.[82] Under the test, if the two offenses had identical elements, the penalties were unconstitutionally disproportionate and the offense with the greater penalty could not stand.[83] Applying the identical elements test, the court found that the AUUW statue has the additional element that the offense must occur either in a vehicle or on a public way, while the FOID card violation could be based on mere possession within the home.[84] Determining that the offense of AUUW and a violation of the FOID Card Act were not identical, the two offenses could not be validly compared for proportionate penalties purposes.[85]

The *Williams* court then discussed *Aguilar* as related to the AUUW offense, noting that the "location element" of the AUUW charge at issue is constitutional when combined with subsection 24-1.6(a)(3)(C) of the AUUW statute (no FOID card).[86] The supreme court concluded that the right to possess a firearm outside the home is subject to the "meaningful regulation" of having a valid FOID card.[87]

2. People v. Schweihs

In *Schweihs*, defendant was charged with two counts of AUUW, one count of violating the FOID Card Act, and two counts of domestic battery.[88] The charges were based on defendant carrying in his vehicle a .45 caliber handgun, while not on his own land, and not possessing a valid FOID card.[89] Defendant filed a motion to dismiss the AUUW charges, asserting that the statute violated the Second Amendment of the United States Constitution.[90] The circuit court dismissed one count of AUUW under section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute in light of *Aguilar*.[91] The circuit court also, *sua sponte*, dismissed the other AUUW count based

79. *Id.* at ¶ 5.
80. *Id.* at ¶ 1.
81. *Id.* at ¶ 14.
82. *Id.* at ¶ 10.
83. *Id.*
84. *Id.* at ¶ 14.
85. *Id.*
86. *Id.* at ¶ 15.
87. *Id.* at ¶ 16 (citing People v. Aguilar, 2013 IL 112116, ¶ 21).
88. People v. Schweihs, 2015 IL 117789, ¶ 3.
89. *Id.*
90. *Id.* at ¶ 4.
91. *Id.* at ¶ 6.

on defendant not possessing a FOID card under section 24-1.6(a)(1), (a)(3)(C) of the AUUW, because the penalty for the AUUW was unconstitutionally disproportionate to defendant's charge for violating the FOID Card Act.[92]

The Illinois Supreme Court reversed, adhering to *People v. Williams*, 2015 IL 117470.[93]

E. *People v. Tolbert*, 2016 IL 117846

Issue: The invitee requirement of the AUUW statute is an exemption to the AUUW offense and not an element.[94] One of the AUUW counts concerned the defendant, who was 17 years old at the time of the arrest, possessing a handgun while under 21 years of age in violation of section 24–1.6(a)(1), (a)(3)(I) of the AUUW statute.[95] Following a bench trial, defendant was convicted of two counts of AUUW.[96] At trial, officers testified that upon arriving on the scene, officers discovered defendant and another man in the gated front yard of the house.[97] Officers detained those at the scene, searched the area, and recovered a loaded, pistol from the porch of the house.[98] At trial, officers testified that defendant admitted to being the owner of the gun.[99]

On appeal, defendant argued, *inter alia*, that his conviction under section 24-1.6(a)(1), (a)(3)(I) for possessing a handgun while under 21 years of age had to be vacated because the State failed to prove all of the elements of the charged offenses.[100] Defendant argued that in order to establish defendant's guilt, the State had to prove that defendant was not an invitee of the person on whose land he was arrested.[101] The appellate court agreed and reversed, finding that the State's charging instrument for defendant's conviction under section 24-1.6(a)(1), (a)(3)(I) for possessing a handgun while under 21 years of age "was fatally defective."[102] As such, the appellate court reasoned, the State bore the burden of including the element in the charging instrument, which the State's information failed to allege that defendant was not an invitee.[103]

92. *Id.* at ¶ 4.
93. *Id.* at ¶¶ 14–15.
94. People v. Tolbert, 2016 IL 117846, ¶ 3.
95. *Id.*
96. *Id.* at ¶ 5.
97. *Id.* at ¶ 4.
98. *Id.*
99. *Id.*
100. *Id.* at ¶ 6.
101. *Id.*
102. *Id.* at ¶ 8.
103. *Id.*

In a unanimous decision, the supreme court reversed, finding that the invitee requirement is not an element of the offense of AUUW.[104] Undertaking a statutory interpretation analysis, the supreme court determined that "we have a clear statement from the General Assembly indicating its intent to withdraw, or exempt, invitees from the reach of section 24–1.6(a)(1), (a)(3)(I)."[105] Further, the supreme court found that the plain language of section 24-2,[106] which set forth possible exemptions, establishes that the invitee requirement was intended by the General Assembly to be an exemption to the offense of aggravated unlawful use of a weapon and not an element.[107] The supreme court, therefore, concluded that the defendant must prove his entitlement to the exemption.[108]

III. JUVENILE COURT ACT

A. *People v. Fiveash*, 2015 IL 117669

Issue: Whether a 23-year-old defendant may be prosecuted in criminal court for crimes that he allegedly committed when he was under 17 years of age.[109]

In May 2012, when defendant was 23 years old, the State charged him with the aggravated criminal sexual assault and criminal sexual assault of his 6-year-old cousin.[110] The offenses allegedly occurred years earlier when defendant was 14 and 15 years of age.[111] Accordingly, the circuit court dismissed the charges, finding that the juvenile court's exclusive jurisdiction over the defendant for the alleged acts in the indictment expired when defendant became an adult.[112] The appellate court reversed and remanded, finding that under the language of section 5-120 of the Juvenile Court Act,[113] there is no bar to defendant's criminal prosecution.[114] Defendant appealed to the supreme court.[115]

The supreme court agreed with the appellate court, finding that defendant's argument would allow him to escape prosecution for "four felony sexual offenses allegedly committed against a six-year-old family

104. *Id.* at ¶ 17.
105. *Id.* at ¶ 16.
106. 720 ILL. COMP. STAT. 5/24-2 (2014).
107. *Tolbert*, 2016 IL 117846, ¶ 17.
108. *Id.*
109. People v. Fiveash, 2015 IL 117669, ¶ 10.
110. *Id.* at ¶ 3.
111. *Id.*
112. *Id.* at ¶ 7.
113. 705 ILL. COMP. STAT. 405/5-120 (2004).
114. *Fiveash*, 2015 IL 117669, ¶ 8.
115. *Id.*

member."[116] The supreme court, citing to established principles of statutory construction, found that defendant's position would have contradicted the legislature's express intent to hold all persons accountable for their offenses.[117] Moreover, juvenile offenders would have a "strong and perverse incentive" to flee or conceal their offense until they reach the age of 21, making them no longer subject to prosecution.[118] The supreme court explained that although juvenile court jurisdiction is exclusive, it does not mean that an offender who ages out of the juvenile system can no longer be charged.[119] Lastly, citing to the extended limitation period for initiating criminal proceedings for sexual offenses against children,[120] the supreme court determined that there was no delay in bringing charges after the facts became known, and the charges were brought well within the applicable limitation period.[121]

Accordingly, the supreme court affirmed the appellate court's judgment reversing the dismissal of the indictment against defendant, and remanded the case to the circuit court for further proceedings.[122]

B. *In re M.A.*, 2015 IL 118049

Issue: Whether the Illinois Child Murderer and Violent Offender Against Youth Registration Act ("the Act")[123] violates respondent's rights to procedural due process or equal protection.[124]

When this juvenile respondent was 13 years old, she got in a physical altercation with her 14-year-old brother, which ended in respondent stabbing her bother.[125] The circuit court adjudicated the respondent delinquent and required her to register under the Act for her crimes of aggravated domestic battery, aggravated battery, and domestic battery.[126] On appeal, the appellate court reversed, finding that the Act violated her procedural due process and equal protection rights.[127]

In a lengthy opinion, the supreme court first noted that the purpose of the Act was to remove nonsexual offenders from the Sex Offender Registration Act ("SORA"), because the persons who committed violent offenses against children had previously been required to register under

116. *Id*. at ¶ 20.
117. *Id*. at ¶ 22.
118. *Id*.
119. *Id*. at ¶ 48.
120. 720 ILL. COMP. STAT. 5/3-6(j) (2002).
121. *Fiveash*, 2015 IL 117669, ¶ 26.
122. *Id*. ¶ 48.
123. 730 ILL. COMP. STAT. 154/1 (2012).
124. In re M.A., 2015 IL 118049, ¶ 1.
125. *Id*. at ¶ 5.
126. *Id*. at ¶ 10.
127. *Id*. at ¶ 14.

SORA, and the legislature had concluded that it was a greater stigma to be categorized as a sex offender than a violent offender.[128] Accordingly, the supreme court noted that an equal protection analysis is based on comparisons of groups and, that, because these two groups are not similarly situated, there is no valid basis for comparing them.[129] Therefore, respondent's equal protection challenge failed.[130]

As to respondent's procedural due process challenge, the supreme court disagreed with the appellate court's unconstitutionality finding that the Act, with its mandated registry for 10 years and its requirement that juvenile offenders automatically register as adults upon turning 17 years of age, denies minors procedural due process.[131] Instead, the supreme court determined that respondent had a procedurally safeguarded opportunity to contest her conviction during her juvenile adjudication proceedings, since mandatory registration depends only on the offender's conviction or adjudication of a specified offense and not current dangerousness.[132]

Lastly, in a special concurrence authored by Justice Burke and joined by Justices Freeman, Kilbride, and Theis, the Justices invited the legislature to reexamine the Act in accordance with recent statutory amendments concerning juvenile sex offenders.[133]

IV. FOURTH AMENDMENT

A. *People v. Timmsen*, 2015 IL 118181

Issues: Whether police had reasonable suspicion to stop defendant's vehicle based solely on defendant making a legal U-turn prior to approaching a police safety roadblock.[134] Whether officers had reasonable suspicion to stop defendant based on a reasonable mistake of law.[135]

At approximately 1:15 a.m., police stopped defendant's car after he made a U-turn at a railroad crossing about 50 feet prior to approaching a mandatory police safety check.[136] Police immediately stopped defendant's car and issued citations for driving while his license was suspended.[137] The defendant filed a motion to suppress the evidence obtained as a result of the traffic stop, arguing that the sheriff's deputy lacked any cause to conduct

128. *Id.* at ¶ 32.
129. *Id.* at ¶ 34.
130. *Id.*
131. *Id.* at ¶ 41.
132. *Id.* at ¶ 48.
133. *Id.* at ¶ 81.
134. People v. Timmsen, 2015 IL 118181, ¶ 7.
135. *Id.*
136. *Id.* at ¶ 3.
137. *Id.*

the stop.[138] The circuit court denied defendant's motion to suppress after finding that defendant's act of turning around approximately 50 feet before a roadside safety check provided reasonable suspicion to justify the stop.[139] The circuit court subsequently found defendant guilty of driving while on a suspended license.[140]

On appeal, defendant argued that the police officers did not have reasonable, articulable suspicion to stop his vehicle and that his motion to suppress should have been granted.[141] A divided panel of the appellate court agreed and reversed, finding that, absent any other suspicious activity, the U-turn itself did not provide specific, articulable facts that a criminal offense had been or was about to be committed.[142] The majority concluded that defendant's motion to suppress evidence should have been granted.[143] Accordingly, the appellate court reversed his conviction and remanded the case to the circuit court for further proceedings.[144]

Justice Schmidt dissented, arguing that defendant's U-turn to avoid the roadblock provided the police with reasonable, articulable suspicion to stop the vehicle.[145] The dissent pointed out that the majority failed to consider the totality of the circumstances, noting that the majority placed too much emphasis on the possibility of defendant's innocent conduct rather than the suspicious nature of making a U-turn in the middle of the night over railroad tracks shortly before a police roadblock.[146] The State appealed to the Illinois Supreme Court.[147]

Before the high court, the state argued that avoidance of the roadblock provided reasonable suspicion and that the officer's reasonable mistake of law justified the stop.[148]

Addressing the State's first argument, the court compared the totality of the circumstances of this case to the situation in *Illinois v. Wardlow*,[149] which held that the defendant's presence in a high-crime area as well as his unprovoked flight upon seeing police officers, gave the officers reasonable suspicion to stop him and investigate further.[150] In this case, the court found that the totality of the circumstances supports a

138. *Id.* at ¶ 4.
139. *Id.*
140. *Id.*
141. *Id.* at ¶ 5.
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.* at ¶ 5.
146. *Id.*
147. *Id.*
148. *Id.* at ¶ 7.
149. 528 U.S. 119 (2000).
150. *Timmsen*, 2015 IL 118181, ¶ 13.

finding of reasonable suspicion.[151] The circumstances that the supreme court considered included defendant's U-turn across railroad tracks just 50 feet before the roadblock,[152] the fact that the U-turn was made in the early morning hours of a weekend (1:15 a.m. on a Saturday),[153] the roadblock was well-marked,[154] and the roadblock was not busy.[155]

The supreme court noted that its conclusion is "entirely consistent" with an individual's right to go about one's business.[156] The supreme court, however, declined to establish a bright-line *per se* rule concerning whether avoiding a roadblock, alone would establish reasonable suspicion.[157] This argument was the focus of Justice Thomas' special concurrence.[158] Because the supreme court found there was reasonable suspicion to stop defendant's vehicle, the supreme court did not need to address whether it was objectively reasonable for the officer to believe that defendant's U-turn violated a traffic law.[159]

V. TRIAL PROCEDURES

A. *People v. Downs*, 2015 IL 117934

Issue: Whether the circuit court erred in responding to a jury question about the definition of "reasonable doubt."[160]

During deliberations on defendant's first-degree murder charge, the jury sent a note to the court asking: "What is your definition of reasonable doubt, 80%, 70%, 60%?"[161] After a discussion with the attorneys, the court gave a written reply stating: "We cannot give you a definition[;] it is your duty to define."[162] After further deliberation, the jury found defendant guilty of first-degree murder.[163]

On appeal, defendant argued for the first time that the circuit court committed plain error by erroneously defining reasonable doubt in response

151. *Id.* at ¶ 14.
152. This was "the type of evasive behavior that is a pertinent factor in determining reasonable suspicion." *Id.*
153. This "indicates more of a probability of criminal behavior such as driving under the influence than does the same action at 8 a.m. on a weekday." *Id.*
154. The supreme court explained that this fact showed that the roadblock "was readily identifiable as a roadblock rather than being mistaken for an accident site or a road hazard, which one may generally desire to avoid." *Id.*
155. This factor "suggests that a driver would not have feared a lengthy delay." *Id.*
156. *Id.* at ¶ 15.
157. *Id.* at ¶ 18.
158. *Id.* at ¶ 27.
159. *Id.* at ¶ 21.
160. People v. Downs, 2015 IL 117934, ¶ 1.
161. *Id.* at ¶ 6.
162. *Id.* at ¶ 7.
163. *Id.*

to the jury's question.[164] The appellate court agreed, holding that defendant met his burden to establish plain error, and remanded the matter for a new trial.[165] In the opinion, the appellate court determined that the circuit court's response defined "reasonable doubt," which could have led the jury to apply some lesser standard of proof than beyond a reasonable doubt.[166]

The Illinois Supreme Court reversed the appellate court's decision, finding that the judge's response to the jurors was consistent with the court's long and consistent precedent of not defining reasonable doubt for the jury.[167] The supreme court first began its reasoning by noting that the United States Constitution neither requires nor prohibits a definition of reasonable doubt, and Illinois is among the jurisdictions that do not define reasonable doubt.[168] In fact, the supreme court referenced the more than 100-year history of the court consistently holding that the term "reasonable doubt" should not be defined for the jury, because the term needs no definition for the reason that the "words themselves sufficiently convey its meaning."[169] The supreme court rejected defendant's argument that the propriety of the judge's response was impacted by the nature of the jury's question as to the percentage equivalent for the reasonable doubt standard.[170] Ultimately, the supreme court refrained from defining reasonable doubt.[171] Accordingly, the appellate court's judgment was reversed and defendant's conviction and sentence was reinstated.[172]

B. *In re H.L.*, 2015 IL 118529

Issue: Whether the attorney certificate required by Illinois Supreme Court Rule 604(d) must be filed at or before the hearing on a defendant's motion to reconsider sentence.[173]

In this case, respondent admitted the allegations of petitions to revoke his probation in two separate cases and admitted the allegations of a delinquency petition in a third case.[174] Respondent filed a motion to reconsider his sentence to indefinite commitment in the Department of Juvenile Justice.[175] The circuit court denied the motion.[176] Respondent's

164. *Id.* at ¶ 1
165. *Id.* at ¶ 10.
166. *Id.* at ¶¶ 27–28.
167. *Id.* at ¶ 27.
168. *Id.* at ¶¶ 18–19.
169. *Id.* at ¶ 24.
170. *Id.* at ¶ 30.
171. *Id.* at ¶ 32.
172. *Id.* at ¶ 36.
173. In re H.L., 2015 IL 118529, ¶ 1.
174. *Id.* at ¶ 3.
175. *Id.*
176. *Id.*

trial counsel filed a Rule 604(d) certificate approximately three weeks after the hearing on the motion to reconsider as well as a notice of appeal.[177]

On appeal, respondent argued, *inter alia*, that his trial counsel failed to strictly comply with Rule 604(d), because he failed to file the certificate prior to or at the time of the hearing on respondent's motion to reconsider sentence.[178]

Respondent contended on appeal that filing the Rule 604(d) certificate after the hearing on the motion to reconsider the sentence was not in strict compliance with the rule, thus requiring a remand to allow timely filing of the certificate, at or before the hearing on the motion to reconsider.[179] The appellate court held that it should be and remanded for the filing of the certificate at or before a new hearing on the motion.[180] The appellate court also said that a new motion could be filed should counsel deem it necessary.[181] The State appealed.[182]

Illinois Supreme Court Rule 604(d), which governs both juvenile and criminal proceedings, states that, to appeal from a judgment entered on a plea of guilty, defense counsel must file with the circuit court a certificate making statements as to how the accused's case has been handled.[183] In the past, the Illinois Supreme Court has said that this rule must be strictly complied with.[184] In this case, the certificate was filed three weeks after the hearing on the unsuccessful motion to reconsider.[185] Thus, the dispute in this case involved the question of whether the certificate must be filed at or before the hearing on the motion to reconsider sentence.[186]

The supreme court found that no timing requirement is stated in Rule 604(d).[187] In view of this, the supreme court determined that strict compliance is achieved by filing an appropriate certificate prior to the filing of any notice of appeal, thereby meeting the requirement of filing it with the circuit court.[188] Accordingly, the appellate court was reversed on this point, and the case was remanded to consider the remaining issues.[189]

177. *Id.*
178. *Id.* at ¶ 4.
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.* at ¶ 1.
183. ILL. SUP. CT. R. 604(d).
184. *In re H.L.*, 2015 IL 118529, ¶ 8 (citing People v. Janes, 158 Ill.2d 27, 35, 630 N.E.2d 790, 793 (1994)).
185. *Id.* at ¶ 3.
186. *Id.* at ¶ 1.
187. *Id.* at ¶¶ 19-20.
188. *Id.*
189. *Id.* at ¶ 25

Justice Freeman dissented, and was joined by Justices Kilbride and Burke.[190] The dissent argued that the majority opinion was contrary to the court's construction of the language in a prior decision, *People v. Shirley*, 181 Ill. 2d 359, 692 N.E.2d 1189 (1998).[191] The dissent claimed that the majority's interpretation does nothing to advance the purpose of the rule of ensuring that defense counsel has reviewed the proceedings with the defendant and made necessary amendments to the post-plea motion before the circuit court rules on it.[192] The dissent also agreed with the juvenile delinquent that the sentence structure of Rule 604(d) indicates that the certificate's filing should precede, or be contemporaneous with, the hearing on the motion.[193]

VI. ADULT SENTENCING

A. *People v. Castleberry*, 2015 IL 116916

Issue: Whether the court should remedy the fact that it applies two different standards for assessing a circuit court's jurisdiction.[194]

In criminal law, a sentence outside of statutory requirements is void, and the circuit court lacks authority to enter it,[195] while in all other areas of the law, the circuit court's authority is not limited by the legislature because it is granted by Illinois Constitution 1970, article VI, section 9.[196] Here, defendant was convicted of two counts of aggravated criminal sexual assault.[197] At sentencing, the State argued that because the crimes had been committed by defendant while he was armed with a firearm, defendant was subject to a mandatory 15-year sentencing enhancement on each of the two counts.[198] The circuit court disagreed, concluding that the legislature had intended the enhancement to be applied only once under the circumstances presented.[199] The circuit court sentenced defendant to a 9-year term of imprisonment on each count, adding the 15-year enhancement to only one of the counts.[200]

The appellate court affirmed defendant's convictions, but found that the circuit court erred in failing to impose the 15-year firearm enhancement

190. *Id*. at ¶ 38.
191. *Id*. at ¶ 31 (Freeman, J., dissenting).
192. *Id*. at ¶ 34.
193. *Id*. at ¶ 35.
194. People v. Castleberry, 2015 IL 116916, ¶ 1.
195. People v. Arna, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995).
196. Belleville Toyota, Inc. v. Toyota Motor Sales, Inc., 199 Ill. 2d 325, 340, 770 N.E.2d 177, 187 (2002).
197. *Castleberry*, 2015 IL 116916, ¶ 3.
198. *Id*.
199. *Id*. at ¶ 4.
200. *Id*.

to both sentences as required by the relevant statute.[201] The appellate court held that defendant's sentence was void and remanded to for resentencing.[202]

The Illinois Supreme Court reversed, overruling the court's prior decision in *People v. Arna*, 168 Ill. 2d 107 (1995), and abolished the void-sentence rule.[203] Under the now-abolished void-sentence rule, a sentence that does not conform to a statutory requirement is void.[204] The supreme court found that the rule is no longer valid in light of its own recent decisions because it is at odds with the grant of jurisdiction given to the circuit courts of the Illinois Constitution.[205] The supreme court explained that whether a judgment is void or merely voidable presents a question of jurisdiction.[206] Thus, where jurisdiction is lacking, the resulting judgment is void and may be attacked at any time, while a voidable judgment is one entered erroneously by a court that had jurisdiction and is not subject to collateral attack.[207] Accordingly, the supreme court reversed the appellate court.[208] In doing so, the supreme court held that the State is not permitted to appeal a sentencing order, but the State has the option of requesting relief by a writ of mandamus.[209]

B. *People v. Thompson*, 2015 IL 118151

Issue: Whether defendant's constitutional challenge could be raised for the first time on appeal from an untimely petition for relief from judgment because his sentence was void. [210]

On March 26, 1994, defendant who was 19 years old at the time, shot and killed his father and his father's girlfriend.[211] Defendant confessed to the murders and directed police to the murder weapon.[212] Defendant argued at his bench trial that he was physically and mentally abused, and as such was only guilty of second-degree murder.[213] The circuit court found

201 *Id.* at ¶¶ 5-6; *see* 720 ILL. COMP. STAT. 5/12-14(d)(1) (2010) (current version at 720 ILL. COMP. STAT. 5/11-1.30(d)(1) (2015)). "A violation of subsection (a)(8) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court." 720 ILL. COMP. STAT. 5/11-1.30(d)(1) (2015).
202. *Id.* at ¶ 6.
203. *Id.* at ¶ 19.
204. *Id.* at ¶ 13.
205. *Id.*
206. *Id.* at ¶ 11.
207. *Id.*
208. *Id.* at ¶ 23
209. *Id.* at ¶¶ 26-27.
210. People v. Thompson, 2015 IL 118151, ¶ 1.
211. *Id.* at ¶ 4.
212. *Id.*
213. *Id.* at ¶ 6.

defendant guilty of two counts of first-degree murder and sentenced him to natural life in prison.[214]

After multiple unsuccessful appeals, defendant filed a section 2-1401 petition claiming his convictions were void because the circuit court failed to appoint two qualified capital attorneys to his case, all of his prior attorneys were ineffective, and perjured testimony was presented at his trial.[215] The State filed a motion to dismiss, arguing that the petition was untimely, the substantive claims were not properly brought, and they had no merit.[216] The circuit court granted the State's motion and dismissed the petition.[217]

On appeal, defendant argued that under the recent decision by the United States Supreme Court in *Miller v. Alabama*,[218] his mandatory life sentence was void and could be challenged at any time because it violated the Eighth Amendment and the proportionate penalties clause of the Illinois Constitution.[219] The appellate court rejected defendant's argument, finding imposition of a natural life sentence creates a voidable, not void, sentence that must be challenged within the statutory time period and cannot be raised for the first time on appeal.[220]

In a unanimous opinion, the supreme court affirmed.[221] The supreme court noted that defendant's challenge was an "as-applied" constitutional challenge, not a facial challenge.[222] Accordingly, the challenge did not fit within any of the recognized exceptions to the two-year limitations period for section 2-1401 petitions.[223] The supreme court determined that defendant's case was not controlled by recent Illinois case law applying *Miller* to mandatory life sentences imposed on minors because defendant was 19 years old at the time of the offense and therefore not a minor.[224] However, the supreme court found that the record on appeal was not sufficiently developed to for the court to be able to consider the merits of the defendant's argument seeking an extension of the *Miller* holding.[225]

214. *Id*. at ¶ 7.
215. *Id*. at ¶¶ 8–14.
216. *Id*. at ¶ 15.
217. *Id*.
218. Miller v. Alabama, 132 S. Ct. 2455 (2012).
219. *Thompson*, 2015 IL 118151, ¶¶ 17–18.
220. *Id*. at ¶ 18.
221. *Id*. at ¶ 46.
222. *Id*. at ¶ 27.
223. *Id*. at ¶¶ 31–33. The three exceptions to the two-year limitations period for section 2-1401 are: (1) the claim did not involve a voidness challenge based on lack of personal or subject matter jurisdiction; (2) the claim was not based on a facially unconstitutional statute that was void *ab initio*; and (3) the void sentence rule of People v. Arna, 168 Ill. 2d 107, 113 (1995), which was recently abolished in People v. Castleberry, 2015 IL 116916, ¶ 19. *See* 735 ILL. COMP. STAT. 5/2-1401 (2014).
224. *Thompson*, 2015 IL 118151, ¶¶ 41–43.
225. *Id*. at ¶¶ 37–38

Nonetheless, the supreme court concluded that defendant was not necessarily precluded from raising his *Miller* challenge in the circuit court, specifically in either a successive post-conviction petition or a section 2-1401 petition if he could satisfy the requirements of those procedures.[226]

C. *People v. Goossens*, 2015 IL 118347

Issue: Whether, under 730 ILCS 5/5-6-3(b), the circuit court's imposition of conditions on probation must be related to the specific offense for which the defendant is sentenced.[227]

In this case, the defendant was convicted of intimidation and sentenced to two years' probation after he, as a police sergeant, threatened not to respond to 911 calls from a local auto racetrack as long as two former police officers worked at the facility.[228] The amended order of probation contained numerous conditions, one of which required that defendant "shall become current in his child support" in his earlier child custody case.[229] Defendant appealed, arguing the circuit court lacked the authority under section 5-6-3(b) of the Unified Code of Corrections ("Code") to include the payment of child support as a condition of probation.[230] On July 16, 2012, the circuit court imposed the child support condition based on a presentencing investigation report indicating that defendant owed over three and a half years in back child support payments, totaling $11,779.89.[231]

Analyzing the case under the principles of statutory construction, the supreme court looked specifically at section 5-6-3(b)(6) of the Code, which allows a court to require, as a condition of probation, that the defendant "support his dependents."[232] The supreme court determined that the unrestricted language used in the Code suggests the legislature did not intend that the expressly enumerated conditions must relate to the nature of the offense.[233] Rather, the enumerated conditions represent the legislature's intent that those conditions may be imposed at the court's discretion for any offense.[234] Accordingly, while probation conditions that are not expressly enumerated in the Code must be reasonable and related to the nature of the offense or the rehabilitation of the defendant, there is no such requirement for a condition of probation that is enumerated in the statute.[235]

226. *Id.* at ¶ 44.
227. People v. Goossens, 2015 IL 118347, ¶ 1.
228. *Id.*
229. *Id.*
230. *Id.*; 730 ILL. COMP. STAT. 5/5-6-3 (2010).
231. *Goossens*, 2015 IL 118347, ¶ 5.
232. *Id.* at ¶ 8.
233. *Id.* at ¶ 12.
234. *Id.* at ¶ 13.
235. *Id.*

VII. JUVENILE SENTENCING

A. *People v. Reyes*, 2015 IL App (2d) 120471, appeal allowed No. 119271 (Sept. 30, 2015)

Issue: Whether the automatic transfer statute (705 ILCS 405/5-130 (2008)), which requires that minors 15 years old or older charged with certain crimes be prosecuted and sentenced as adults, violates the Eighth Amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution, as well as the due process clauses of both the United States Constitution.[236]

Defendant was convicted as an adult of one count of first degree murder and two counts of attempted murder and sentenced to 45 years for murder (the minimum 20 years plus a 25-year firearm enhancement) and two consecutive 26-year terms for attempted murder (the minimum 6 years plus a 20-year firearm enhancement for each), for an aggregate sentence of 97 years.[237]

Defendant argued that his 97-year aggregate term of imprisonment is a *de facto* mandatory natural life term of imprisonment that is unconstitutional pursuant to the recent United States Supreme Court decision in *Miller*.[238] The Court in *Miller* held that the Eighth Amendment prohibition against cruel and unusual punishment barred imposition of a mandatory natural life sentence on a juvenile.[239]

On appeal, the appellate court declined to extend the Eighth Amendment rationale in *Miller* because "defendant did not receive the most severe of all possible penalties, such as the death penalty or life without the possibility of parole."[240] Rather, defendant received an aggregate term-of-years sentence for multiple counts and multiple victims, which is distinguishable from the *Miller* defendants, who were sentenced to life without parole based on single murder convictions.[241] Therefore, the appellate court concluded that an expansion of the holding in *Miller* to the facts of this case "would result in confusion and uncertainty."[242] Instead, the appellate court decided to follow current precedent and affirmed defendant's conviction.[243]

236. People v. Reyes, 2015 IL App (2d) 120471, ¶ 1.
237. *Id.* at ¶ 6.
238. *Id.* at ¶ 8 (citing Miller v. Alabama, 132 S. Ct. 2455 (2012)).
239. *Id.* at ¶¶ 10–11.
240. *Id.* at ¶ 23.
241. *Id.*
242. *Id.* at ¶ 25.
243. *Id.*

The Illinois Supreme Court allowed defendant's petition for leave to appeal.[244]

B. *In re Michael D.*, 2015 IL 119178

Issue: Whether an order continuing a case under supervision pursuant to section 5-615(1) of the Juvenile Court Act (705 ILCS 405/5-615(1) (2014)) is an appealable judgment.[245]

Following a bench trial, the juvenile, Michael D., was found guilty of theft, and the circuit court entered an order continuing the case under supervision for one year and restitution.[246] The order also referred respondent for a TASC evaluation and ordered him to pay $160 in restitution to the victim.[247] The circuit court, however, did not adjudge respondent a ward of the court.[248] On appeal, the appellate court affirmed, finding pre-guilt supervision orders were not appealable, and that recent statutory changes allowing for post-guilt supervision did not make such orders appealable under any supreme court rule.[249]

In this decision, the supreme court affirmed the appellate court holding.[250] Distinguishing juvenile supervision from adult supervision orders, the supreme court determined that unlike in the adult criminal context where supervision orders are specifically appealable under Supreme Court Rule 604(b), a continuation under supervision in a juvenile case is not a final judgment, and therefore, the supervision is not appealable.[251] In a footnote, the supreme court noted that respondent appealed only the finding of guilty, but not the restitution order or any other condition of supervision.[252]

Lastly, the supreme court declined respondent's request to modify its rules to make post-delinquency juvenile supervision orders appealable.[253] Although the supreme court found the question "worthy of review by this court's rules committee," the court instead found that it would be better for a rule change to take place through the usual rulemaking process, with public input.[254]

244. People v. Reyes, 2015 IL App (2d) 120471, *appeal docketed*, No. 119271 (Ill. Sept. 30, 2015).
245. In re Michael D., 2015 IL 119178, ¶ 1.
246. *Id.* at ¶¶ 3–4.
247. *Id.* at ¶ 4.
248. *Id.*
249. *Id.* at ¶ 5.
250. *Id.* at ¶ 29.
251. *Id.* at ¶18.
252. *Id.* at ¶ 5, n. 1.
253. *Id.* at ¶ 27.
254. *Id.*

Justice Burke filed a dissent, joined by Justice Freeman, agreeing that current statutes and rules do not permit an appeal in this situation, but stating that the court should have granted the juvenile's request to amend its rules.[255]

VIII. SUPPRESSING EVIDENCE

A. *People v. Burns*, 2016 IL 118973

Issue: Whether the warrantless use of a drug-detection dog at an apartment door violated defendant's fourth amendment rights.[256]

The defendant lived on the third floor of an apartment building in Urbana, which was usually kept locked at its two exterior entrances and is not accessible to the public.[257] On November 29, 2012, Urbana police department received an anonymous Crimestoppers hotline tip that defendant was selling marijuana out of her apartment at an amount of approximately two pounds of marijuana a week.[258] According to the tipster, defendant's supply of marijuana came from her brother who lived in California.[259]

Several weeks later, officers investigated the tip.[260] In the early morning hours of January 10, 2013, a detective, who was dressed in plain clothes, was able to gain access to the inside of the locked apartment complex by asking an unidentified tenant to let him in the building.[261] While in the building, the detective observed a package addressed to defendant with a shipping label identifying the sender from being from California.[262] Hours later, a canine officer entered defendant's apartment building, without a warrant, with his drug-detection dog.[263] The canine officer used the drug-detection dog to conduct an open air sweep of the doors to two apartments, including defendant's door.[264] The dog alerted to the presence of narcotics at defendant's door.[265] Based on this, and other information, a search warrant was later issued.[266]

255. *Id.* at ¶ 34.
256. People v. Burns, 2016 IL 118973, ¶ 16.
257. *Id.* at ¶ 3.
258. *Id.* at ¶ 4.
259. *Id.*
260. *Id.* at ¶ 6.
261. *Id.*
262. *Id.*
263. *Id.* at ¶ 7.
264. *Id.*
265. *Id.*
266. *Id.*

Prior to trial, defendant moved to suppress the evidence, arguing that *Florida v. Jardines*[267] prohibited the dog sniff search.[268] The circuit court granted defendant's motion to suppress, rejecting the State's argument that *Jardines* applied only to single-family dwellings and not to apartment complexes.[269]

The appellate court affirmed, holding that the search warrant was issued on the basis of an unconstitutional warrantless dog sniff.[270] Additionally, the appellate court concluded that the recovered marijuana was fruit of the poisonous tree and the exclusionary rule applies.[271]

The State appealed to the Illinois Supreme Court, arguing that use of the drug-detection dog did not violate defendant's fourth amendment rights because it did not occur in defendant's home or its curtilage.[272] According to the State, the officers conducted a dog sniff on the landing outside of defendant's apartment door, which, the State claimed, was not part of defendant's protected cartilage.[273] The supreme court disagreed, and affirmed the circuit court's ruling to suppress the evidence.[274]

In a split decision, the Illinois Supreme Court relied heavily on the United States Supreme Court decision in *Jardines*.[275] In *Jardines*, the court held that it is a violation of the Fourth Amendment for officers to use an extra detection tool such as a drug dog without a warrant outside a person's home.[276]

In the Illinois case, the supreme court determined that the landing outside of defendant's apartment door constituted "cartilage," and therefore, was protected by the Fourth Amendment. The majority found that the landing closely resembled the idea of cartilage typically applied to single-person homes because it was immediately outside the apartment door and the area was located within a locked structure intended to exclude the general public.[277] The supreme court rejected the State's argument that the landing in front of defendant's apartment was not associated with the intimate activities of the home that animate the curtilage concept.[278] Instead, the supreme court reiterated that the entrances to defendant's apartment building were locked every time police attempted to enter the secured building and officers entered the building with the knowledge that

267. 133 S. Ct. 1409 (2013).
268. *Burns*, 2016 IL 118973, ¶ 10.
269. *Id.* at ¶¶ 11–12.
270. *Id.* at ¶ 13.
271. *Id.*
272. *Id.* at ¶ 18.
273. *Id.*
274. *Id.* at ¶ 44.
275. *Id.* at ¶¶ 18–45.
276. *Id.* at ¶ 27.
277. *Id.* at ¶ 37.
278. *Id.* at ¶ 40.

the building they entered was not accessible to the general public.[279] Additionally, the supreme court noted that unlike in *Jardines*, "the police conduct in this case certainly exceeded the scope of the license to approach defendant's apartment door when the officers entered a locked building in the middle of the night" and remained in the building for an extended period of time.[280]

The supreme court then rejected the State's alternative argument that the evidence should not be suppressed because the officers acted in good-faith reliance on established precedent.[281] The supreme court found that there was "no binding precedent specifically authorizing the officers' conduct in this case."[282] As a result, the supreme court held that the good-faith exception to the exclusionary rule announced in *People v. LeFlore*,[283] a case decided after the appellate court rendered its decision in this case, does not apply to the officers' warrantless use of a drug-detection dog at defendant's apartment door, located within a locked apartment building.[284]

Finally, the supreme court found the remaining evidence in the warrant application, absent the dog sniff, was insufficient to establish probable cause for a search warrant.[285]

Justice Thomas, joined by Justice Karmeier, argued that the "great weight of federal authority holds that there is no reasonable expectation of privacy in the common areas of an apartment building, even if it is locked or secured."[286] The dissent found that unlike in *Jardines*, "the area in question here did not belong to defendant, nor did she have exclusive control over it, and there was therefore no trespass as far as defendant was concerned. Everyone understands that tenants of an apartment building do not own or possess the common areas."[287]

B. *People v. Gaytan*, 2015 IL 116223

Issues: Whether the registration plate statute prohibits only those objects that obstruct the visibility and legibility of the license plate that are physically connected or prohibits objects attached to the plate itself. Whether the traffic stop was, nonetheless, valid because it was objectively

279. *Id*. at ¶ 41.
280. *Id*. at ¶ 42.
281. *Id*. at ¶ 47. The State cited, *United States v. Place*, 462 U.S. 696 (1983), *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), and *Illinois v. Caballes*, 543 U.S. 405 (2005).
282. *Id*. at ¶ 50.
283. 2015 IL 116799.
284. *Burns*, 2016 IL 118973, ¶ 68.
285. *Id*. at ¶ 79.
286. *Id*. at ¶ 103.
287. *Id*. at ¶ 114.

reasonable for the officers to have believed that the trailer hitch was in violation of the statute.[288]

Defendant, Gaytan, was a passenger in a bright purple Lincoln Mark V with large tires and a ball-type trailer hitch.[289] Police officers stopped the car, believing that the trailer hitch obstructed the vehicle's license plate in violation of section 3-413(b) of the Illinois Vehicle Code (625 ILCS 5/3-413(b) (West 2010)).[290] When the driver rolled down the car window, officers detected an odor of cannabis, which later revealed to be a diaper bag containing cannabis, belonging to defendant.[291]

At the time of defendant's arrest, section 3-413(b) stated:

> "(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than 5 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."[292]

Prior to trial, defendant filed a motion to suppress evidence in which he contended that the trailer hitch was not prohibited and, therefore, there was no reasonable, articulable suspicion that an offense was being committed when the officers conducted the traffic stop.[293] Officers testified that their view of the numbers on the license plate was obstructed by the hitch, thereby making it impossible to run a computer check of the license plate numbers to identify the owner.[294] Defendant submitted into evidence a photograph of the Lincoln from a vantage point behind the vehicle, showing the license plate and the trailer hitch.[295] Defendant argued there was no material obstruction of the plate because it did not obscure any part of the numbers, but rather the photo showed that the trailer hitch partially obscured the bottom of the license plate.[296] The circuit court denied defendant's motion to suppress, finding that when viewed by the police officers from their position some distance behind the vehicle, the trailer hitch obstructed at least one of the numbers on the license plate and that this obstruction violated section 3-413(b).[297]

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288. People v. Gaytan, 2015 IL 116223, ¶¶ 22, 42.
289. *Id.* at ¶¶ 5–7.
290. *Id.* at ¶ 5.
291. *Id.*
292. 625 ILL. COMP. STAT. 5/3-413(b) (2010).
293. *Gaytan*, 2015 ILL 116223, ¶ 6.
294. *Id.* at ¶ 8.
295. *Id.* at ¶ 9.
296. *Id.*
297. *Id.* at ¶ 10.

On appeal, the appellate court rejected the circuit court's conclusion that the police officers had a lawful basis for stopping the car.[298] The appellate court determined that section 3-413(b) prohibits only "objects obstructing the registration plate's visibility that are connected or attached to the plate *itself*,"[299] and not obstructions such as a trailer hitch that are not attached to the license plate.[300]

In a unanimous decision, the Illinois Supreme Court reversed, finding that the statute is ambiguous because the statutory language, itself, does not provide sufficient guidance to clarify the purpose of the statute of whether to prohibit all objects obstructing any view of the license plate or to prohibit only objects attached to the license plate.[301] Thus, the supreme court invoked the rule of lenity, holding that section 3-413(b) prohibits only those objects that obstruct the visibility and legibility of the license plate, which are physically connected or attached to the plate itself.[302]

Finally, the supreme court addressed the State's argument that the traffic stop should remain valid because the officers' understanding of section 3-413(b) was an objectively reasonable mistake.[303] The appellate court below rejected the State's proposition,[304] but during the pendency of the State's appeal to the Illinois Supreme Court, the United States Supreme Court reached the opposite conclusion in *Heien v. North Carolina*.[305] In *Heien*, the Court determined that the Fourth Amendment is not violated when a police officer pulls over a vehicle based on an "objectively reasonable, although mistaken, belief" that the traffic laws prohibited the conduct which was the basis for the stop.[306] In so holding, the *Heien* Court emphasized that the standard for determining whether a reasonable mistake of law has been made is an objective one, and that courts "do not examine the subjective understanding of the particular officer involved."[307] In light of *Heien*, the Illinois Supreme Court concluded that under the circumstances of this case, it was objectively reasonable for the officers to have believed that the trailer hitch was in violation of section 3-413(b).[308] Consequently, the supreme court found that the vehicle stop was constitutionally valid under the Fourth Amendment.[309]

298. *Id*. at ¶ 45.
299. *Id*. at ¶ 38 (emphasis in original).
300. *Id*. at ¶ 2.
301. *Id*. at ¶ 38.
302. *Id*. at ¶ 39.
303. *Id*. at ¶ 42.
304. *Id*. at ¶ 43.
305. Heien v. North Carolina, 135 S.Ct. 530 (2014).
306. *Id*. at 536.
307. *Id*. at 539.
308. *Gaytan*, 2015 IL 116223, ¶ 48.
309. *Id*.

C. *People v. Stapinski*, 2015 IL 118278

Issue: Whether defendant's substantive due process rights were violated when the State breached a cooperation agreement and charged defendant.[310]

Police officers stopped the defendant after he picked up a package from the post office that was suspected to contain an illegal substance, and defendant was asked to cooperate with the police with regard to the package.[311] The police told defendant that if he agreed to assist them in apprehending the person to whom he was to deliver the package as well as other drug investigations, he would not be prosecuted.[312] Defendant was never advised of his *Miranda* rights prior to this conversation with the police.[313] After defendant agreed to cooperate with the police, he gave the names of two people to whom he was supposed to deliver the package to and participated in a controlled delivery resulting in their arrests.[314] Both individuals were successfully prosecuted for possession of ketamine.[315] However, defendant was unable to work further as a confidential informant for the police because he was labeled as a "snitch."[316]

About a year later, defendant was indicted for unlawful possession of a controlled substance containing ketamine, with intent to deliver.[317] The State brought charges against defendant because they argued that defendant did not assist in four cases, as they had agreed.[318] Defendant sought dismissal of the charges on due process grounds and under the cooperation agreement.[319] After a hearing of all of the evidence, the circuit court granted defendant's motion to dismiss the indictment, finding that there was a valid cooperation agreement that was violated and that defendant's due process rights were violated because he had incriminated himself based upon the promises that were made and that he had fulfilled his part of the bargain.[320]

On appeal, the State argued that the circuit court erred in dismissing the indictment because the correct remedy was suppression of defendant's incriminating statements.[321] A divided appellate court panel reversed and

310. People v. Stapinski, 2015 IL 118278, ¶ 37.
311. *Id.* at ¶¶ 5–8.
312. *Id.* at ¶ 9.
313. *Id.* at ¶ 8.
314. *Id.* at ¶¶ 12, 19.
315. *Id.* at ¶ 20.
316. *Id.* at ¶ 22.
317. *Id.* at ¶ 24.
318. *Id.*
319. *Id.* at ¶ 25.
320. *Id.*
321. *Id.* at ¶ 27.

remanded.[322] The majority concluded that dismissal was improper because defendant's due process rights could be protected by suppressing defendant's incriminating statements.[323] The dissent found that the circuit court did not err in granting defendant's motion for dismissal because this was the only way would defendant receive the benefit of the bargain he made with the police since mere suppression would not remove the prejudice defendant had suffered.[324]

The Illinois Supreme Court disagreed with the appellate court, and reversed.[325] The supreme court first clarified that once a due process violation is found, the circuit court's decision as to the appropriate remedy is reviewed for an abuse of discretion.[326]

On the merits, the supreme court noted the differences between cooperation agreements and plea agreements, finding that the principle for enforcing cooperation agreements is the due process clause of the fourteenth amendment.[327] Thus, a circuit court has the inherent authority to dismiss an indictment where due process has been denied.[328] Accordingly, under an abuse of discretion standard, the supreme court found that defendant's substantive due process rights were violated when the State breached the agreement the police entered into with defendant.[329]

The supreme court also rejected the State's arguments that prosecutors are not bound by an agreement or promise not to prosecute made by law enforcement officers.[330] The supreme court reasoned that whether or not the cooperation agreement was "valid" in the sense that it was approved by the State's Attorney, is not important because the agreement could be enforced on due process grounds if a defendant's reliance on the promise has constitutional consequences.[331]

D. *People v. Cummings*, 2015 IL 115769

Issue: Whether an officer's request for defendant's driver's license was an unreasonable prolongation of the traffic stop after the reasonable suspicion for the traffic stop dissipated.[332]

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322. *Id.*
323. *Id.* at ¶ 28.
324. *Id.* at ¶ 30.
325. *Id.* at ¶ 56.
326. *Id.* at ¶ 35.
327. *Id.* at ¶¶ 46–48.
328. *Id.* at ¶ 50.
329. *Id.* at ¶ 52.
330. *Id.* at ¶ 53.
331. *Id.* at ¶ 55.
332. People v. Cummings, 2015 IL 115769, ¶¶ 1, 15.

Defendant, a male, was driving a vehicle registered to a female owner when an officer initiated a traffic stop because the female owner was the subject of an arrest warrant.[333] Upon approaching the vehicle, the officer saw that defendant was a man and not the female subject to the arrest warrant.[334] Defendant was cited for driving while his license was suspended.[335]

The circuit court granted defendant's motion to suppress evidence, and the appellate court affirmed.[336] In a unanimous decision, the Illinois Supreme Court affirmed.[337] However, the United States Supreme Court remanded the case for consideration in light of a recent decision.[338]

On remand, the Illinois Supreme Court reversed, finding that a traffic stop's "mission" consists of the purpose for the stop and "related safety concerns."[339] Accordingly, the supreme court reasoned that requesting a driver's license and conducing warrant and criminal history checks fit within the related safety concerns, regardless of the initial reason for the traffic stop.[340]

IX. POST-CONVICTION CHALLENGES

A. *People v. Allen*, 2015 IL 113135

Issue: Whether a *pro se* post-conviction petition may be summarily dismissed on the basis that its supporting evidentiary affidavit is not notarized.[341]

Defendant was convicted of first-degree murder and sentenced to natural life imprisonment.[342] The appellate court affirmed his conviction on direct appeal.[343] Thereafter, defendant subsequently filed a post-conviction petition, claiming that another man, Robert Langford, committed the murder.[344] For support, defendant attached a document, entitled "Affidavit" to his petition in which Langford stated that he committed the murder, not

333. *Id.* at ¶ 3.
334. *Id.*
335. *Id.*
336. *Id.* at ¶ 4.
337. *Id.*
338. People v. Cummings, 2016 IL 115769, ¶ 1.
339. *Id.* at ¶ 13.
340. *Id.* at ¶ 17.
341. People v. Allen, 2015 IL 113135, ¶ 19.
342. *Id.* at ¶ 13.
343. *Id.*
344. *Id.* at ¶ 14.

defendant.[345] Defendant's petition was summarily dismissed by the circuit court.[346]

The appellate court affirmed the dismissal due to the lack of notarization on the Langford statement.[347] The appellate court found the unnotarized Langford statement would not qualify as an affidavit because section 122-2 of the Post-Conviction Hearing Act requires a petitioner to attach "affidavits, records, or other evidence" in support of the petition's allegations.[348] Defendant appealed to the supreme court.[349]

The Post-Conviction Hearing Act provides criminal petitioners with the means to collaterally attack constitutional errors regarding their conviction or sentence.[350] There are three procedural stages for relief.[351] At the first stage, the trial judge must liberally construe the allegations in favor of the petitioner and take all facts stated in the petition as true unless positively rebutted by the record.[352] The judge must, within the first 90 days after the petition is filed and docketed, dismiss a petition summarily if the court determines it is "frivolous or is patently without merit."[353] A petitioner must provide some factual support for his claims by attaching affidavits, records, or other evidence supporting the petition's allegations or the petitioner explain why such evidence is not attached.[354]

If the petition is not dismissed as being frivolous or patently without merit, the circuit court then orders the petition to be docketed for further consideration.[355] Moreover, under this deferential review, a petition is sufficient to proceed to the second stage of post-conviction proceedings if any allegation constitutes a "gist" of a constitutional claim.[356] In the second stage, the defendant bears the burden of making a substantial showing of a constitutional violation.[357] If the defendant has carried his burden to make a substantial showing of a constitutional violation throughout the second stage, the court advances the petition to the third stage where the circuit court may receive "affidavits, depositions, oral testimony, or other evidence," to weigh the merits of the petition and determine whether the defendant is entitled to relief.[358]

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345. *Id.*
346. *Id.* at ¶¶ 15–16.
347. *Id.* at ¶ 17.
348. *Id.*
349. *Id.* at ¶ 2.
350. 725 ILL. COMP. STAT. 5/122-1 to 5/122-8 (2014).
351. *Allen*, 2015 IL 113135, ¶ 21.
352. *Id.* at ¶ 25.
353. 725 ILL. COMP. STAT. 5/122–2.1(a)(2) (2014).
354. *Id.* at § 122-2.
355. *Id.* at § 122-2.1(b).
356. *Allen*, 2015 IL 113135, ¶ 24.
357. *Id.* at ¶ 21.
358. *Id.* at ¶ 22.

In a 5-2 decision, the Illinois Supreme Court determined that defendant's failure to notarize Langford's statements did not interfere with the circuit court's ability to determine if the petition, taken as true at the first stage, set forth a constitutional claim for relief or destroy its ability to show that the petition's allegations are capable of independent corroboration.[359] Instead, the circuit court must look to whether the evidentiary attachments, including unnortarized affidavits, show that the petition's allegations are capable of corroboration and identifying the sources, character, and availability of evidence alleged to support the petition's allegations.[360] The supreme court noted, however, that a defendant is not entirely absolved from the notarization requirement, because the State may challenge this nonjurisdictional procedural defect at the second stage of proceedings.[361]

Justice Thomas dissented, which was joined by Justice Karmeier.[362] The dissent argued that the petition failed to comply with the Post-Conviction Hearing Act requirement that affidavits or other evidence be attached to a petition.[363] The dissent noted that defendant only attached to his *pro se* petition was "a piece of paper containing a statement purporting to be from a man named Robert Langford," which was not made under oath, was not sworn to before a person who has authority under the law to administer oaths, and was not notarized.[364] Thus, the dissent concluded that Langford's statement had "absolutely 'no legal effect.'"[365] The dissent also expressed concern that the majority opinion ruling will cause a flood of frivolous second-stage post-conviction proceedings.[366]

B. *People v. Kuehner*, 2015 IL 117695

Issue: Whether an appointed counsel on post-conviction may be allowed to withdraw based on a motion and brief that does not address all of the petitioner's *pro se* claims individually.[367]

In 2005, defendant pleaded guilty to attempted murder and home invasion, in exchange for dropping four other charges.[368] In 2009, defendant filed a *pro se* post-conviction petition alleging several claims generally centering on ineffective assistance of counsel and denial of due

359. *Id.* at ¶ 34.
360. *Id.*
361. *Id.* at ¶ 35.
362. *Id.* at ¶¶ 55, 78.
363. *Id.* at ¶ 53 (Thomas, J. dissenting).
364. *Id.*
365. *Id.* (citing Roth v. Ill. Farmers Insurance Co., 202 Ill. 2d 490, 497, 782 N.E.2d 212, 216 (2002)).
366. *Id.* ¶ 76.
367. People v. Kuehner, 2015 IL 117695, ¶ 1.
368. *Id.* at ¶ 4.

process.[369] Primarily he alleged trial counsel failed to investigate defendant's mental illness, and had made misrepresentations to defendant's mother and aunt to persuade them to urge defendant to plead guilty.[370] He attached affidavits from the mother and the aunt to support his claims.[371] The circuit court found the petition was not frivolous and patently without merit and advanced the petition to the second stage.[372] Accordingly, the circuit court appointed counsel to represent defendant.[373]

The State filed a motion to dismiss, and appointed counsel filed both a *Finley*[374] motion to withdraw as counsel and brief in support of that motion.[375] According to the brief in support of the motion to withdraw, counsel stated that after a thorough review of the case file she could not find any flaws in the process that defendant received.[376] Appointed counsel did not address, analyze, or mention any of the claims or allegations relating to trial counsel's alleged lies in either her motion to withdraw or the supporting brief.[377] Following a hearing, the circuit court granted both appointed counsel's motion to withdraw and the State's motion to dismiss.[378] The appellate court affirmed.[379]

In an unanimous decision, the Illinois Supreme Court reversed, holding that where a post-conviction petition advances to the second stage for reasons other than procedural default, a motion to withdraw by appointed counsel must contain at least some explanation as to why all of the claims set forth in that petition are so lacking in legal and factual support as to compel his or her withdrawal from the case.[380] The supreme court found that the motion filed by appointed counsel in this case failed to meet this standard.[381]

C. *People v. Carter*, 2015 IL 117709

Issue: Whether defendant's failure to properly serve the State with a section 2-1401 prevents the circuit court from dismissing the petition *sua sponte* within 30 days of filing.[382]

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369. *Id.* at ¶ 5.
370. *Id.*
371. *Id.* at ¶ 6.
372. *Id.* at ¶ 8.
373. *Id.*
374. Pennsylvania v. Finley, 481 U.S. 551 (1987).
375. *Kuehner*, 2015 IL 117695, ¶ 8.
376. *Id.* at ¶ 9.
377. *Id.*
378. *Id.*
379. *Id.* at ¶ 10.
380. *Id.* at ¶ 27.
381. *Id.*
382. People v. Carter, 2015 IL 117709, ¶ 1.

Following a bench trial, defendant was found guilty of first-degree murder.[383] Defendant's conviction and sentence was affirmed in 2006.[384] In 2012, defendant mailed a "motion to vacate judgment" in which he argued that the mandatory 25-year enhancement to his sentence was void because the circuit court only found defendant guilty of murder.[385] Defendant attached a "Proof/Certificate of Service" to his filing alleging that he placed it in "institutional mail" at his correctional center and addressed it to the State's Attorney and Clerk of Court in Chicago.[386] The circuit court assumed that defendant intended the pleading as a petition pursuant to section 2-1401 of the Code of Civil Procedure,[387] which the circuit court dismissed on the merits.[388]

On appeal, defendant argued that the circuit court's dismissal was premature because of defendant's improper service via U.S. mail rather than certified mail.[389] The appellate court reversed the circuit court, holding that the circuit court erred in prematurely dismissing the petition before the petition had been properly served on the state.[390]

The Illinois Supreme Court unanimously reversed, determining that there had been no showing that the service was deficient.[391] The supreme court found from the record is that well over 30 days had passed since the filing of defendant's petition when the circuit court dismissed defendant's petition, *sua sponte*, on the merits.[392] Disagreeing that the State was not given proper notice or that the circuit court's *sua sponte* dismissal was premature, the supreme court concluded that "any section 2-1401 petitioner who seeks to use, on appeal, his own error, by way of allegedly defective service, in an effort to gain reversal of a circuit court's *sua sponte* dismissal of his or her petition on the merits, must affirmatively demonstrate the error via proceedings of record in the circuit court."[393]

383. *Id.* at ¶ 3.
384. *Id.*
385. *Id.* at ¶ 5.
386. *Id.*
387. 735 ILL. COMP. STAT. 5/2-1401 (2012).
388. *Carter*, 2015 IL 117709, ¶ 6.
389. *Id.* at ¶¶ 7–9.
390. *Id.* at ¶ 10.
391. *Id.* at ¶ 24.
392. *Id.* at ¶ 23.
393. *Id.* at ¶¶ 23–25.