No. 121365

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. BYRON BOYKINS, Petitioner-Appellant.	) On Appeal from the Appellate Court of) Illinois, First Judicial District) No. 1-14-2542)) There on Appeal from the Circuit Court) of Cook County, No. 07 CR 7163)) The Honorable Clayton J. Crane,) Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE ACTION

In March 2009, petitioner pleaded guilty in the Circuit Court of Cook County to first degree murder and was sentenced to twenty-two years in prison. SR3-16; C23-35.[1] He did not file a direct appeal.

In May 2014, he filed a postconviction petition, C121-32, that the trial court summarily dismissed in July 2014, C152-57; RD-2. The Illinois Appellate Court, First District, affirmed, *People v. Boykins*, 2016 IL App (1st) 142542-U; A4-11, and petitioner appeals that judgment. No question is raised regarding the charging instrument.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 651. This Court allowed petitioner's petition for leave to appeal on November 23, 2016. *People v. Boykins*, 65 N.E.3d 843 (2016) (table).

ISSUE PRESENTED FOR REVIEW

At his plea hearing, the trial court told petitioner that he faced a prison term of twenty to sixty years or natural life for first-degree murder, and that when released from prison "there is a period of three years of mandatory supervised release [MSR], sometimes referred to as parole." SR4-5. Following that admonition, the trial court outlined the terms of the plea — that petitioner would plead guilty in exchange for a twenty-two-year prison term —

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[1] The record on appeal contains three relevant volumes. The common law record is cited as "C__"; the report of proceedings as "R__"; and the supplemental report of proceedings as "SR__." Two other volumes (one supplemental common law record and one supplemental report of proceedings) are not cited in this brief because they pertain to matters unrelated to the issue on appeal. Citations to petitioner's Brief and Appendix appear as Br__, and A__, respectively.

but did not mention MSR again in doing so. SR7-8. The issue is whether the trial court's earlier admonishment about MSR, when read in context, satisfied this Court's Rule 402(a)(2) and due process because it would have sufficiently informed an ordinary person under the circumstances that MSR would be included in any negotiated sentence.

STATEMENT OF FACTS

In 2007, petitioner was charged with the first-degree murder of Carlos Mathis and aggravated unlawful use of a weapon (AUUW). C23-35. On the day trial was to begin, petitioner's attorney informed the court that petitioner had accepted the People's offer to plead guilty to first-degree murder in exchange for a twenty-two-year prison term and dismissal of the AUUW charges. SR3. The court first admonished petitioner as to the charge:

> Mr. Boykins, you're charged with the offense of first degree murder. That event is alleged to have occurred on or about October the 16th of the year 2006, in that you, without lawful justification, intentionally and knowingly killed – shot and killed Carlos Mathis, M-a-t-h-i-s.

SR4. And then the court admonished petitioner as to the sentencing consequences related to that charge:

> In the State of Illinois that's referred to as – the sentencing for that case is from 20 to 40 – 20 to 60 years in the Illinois State penitentiary. If I find that you've been found guilty of the same or greater class felony in the last ten years, the maximum penitentiary time in this case would be life.
>
> Upon your release from the penitentiary, there is a period of three years of mandatory supervised release, sometimes referred to as parole.
>
> Understanding the nature of the offense and its possible penalties, how do you plead to this matter; guilty or not guilty?

SR4-5. Petitioner responded, "[g]uilty." SR5.

After petitioner signaled his understanding that he was waiving, among other things, his right to a jury and to cross-examine witnesses, SR5-6, the court reiterated the terms of the agreement — that petitioner would plead guilty in exchange for a twenty-two-year prison sentence — but did not mention MSR again, SR7. Petitioner stated that he had no questions about those terms. SR7-8. Following a recitation of the factual basis for the plea, the court imposed the agreed-upon sentence. SR12-13. Petitioner did not appeal.

In 2014, petitioner filed a pro se postconviction petition alleging, among other things, that he was denied due process when the court failed to admonish him at sentencing about the three-year MSR term; he claimed that he was unaware of MSR until he "heard other inmates talking about it." C122-24. Petitioner requested that the court either reduce his prison term to nineteen years or rescind the MSR term. C132.

The trial court summarily dismissed the petition, finding that its admonishment concerning MSR satisfied due process and Illinois Supreme Court Rule 402(a)(2) (requiring court to inform defendant of "minimum and maximum sentences prescribed by law" before accepting plea), as set forth in *People v. Whitfield*, 217 Ill. 2d 177 (2005), and that petitioner did not state an arguable claim to the contrary. Although the court acknowledged that it did not "expressly link" the MSR term to the agreed-upon sentence (i.e., it did not specifically mention MSR again when it outlined the terms of the agreement and accepted petitioner's plea), it had "substantially complied" with Rule 402(a)(2) and due process by unambiguously admonishing him moments earlier, in the course of describing the sentencing range applicable to first-degree murder, that he was obligated to serve a three-year MSR term upon his "release from the penitentiary." C154

The appellate court affirmed, concluding that the trial court's admonishment "conveyed the necessary warning regarding the three-year term of MSR in no uncertain terms, such that an ordinary person in defendant's circumstances would understand it." *People v. Boykins*, 2016 IL App (1st) 142542-U, ¶ 15; A9. The court rejected petitioner's argument that the trial court failed to sufficiently "link" the admonishment about MSR to the actual, specific sentence it imposed; no due process or Rule 402 error occurs so long as the trial court informs the defendant about the applicable MSR term at some point prior to imposing sentence and accepting petitioner's plea. *Id.* at ¶ 18; A11. Because the trial court followed that procedure here, there was no error. *Id.*

ARGUMENT

I. Prior to Accepting Petitioner's Plea, the Trial Court Substantially Complied with Rule 402 and Due Process When It Admonished Him That He Was Obligated to Serve a Three-Year MSR Term Upon His Release From Prison.

A. Legal Standards

People v. Whitfield, 217 Ill. 2d 177, 190, 195 (2005), held that when a court completely fails to admonish the defendant, prior to accepting his negotiated plea, that he must serve a period of MSR (an automatic part of any prison sentence), the addition of the undisclosed MSR term to the negotiated sentence violates due process and Ill. Sup. Ct. R. 402(a)(2). But *Whitfield* stopped short of instructing courts when to provide the warning (other than that it must come at some point before the defendant accepts the plea), or what terminology to use when issuing it. Rather, "substantial compliance" with the rule is sufficient (indeed, Rule 402 itself instructs as much), and an "imperfect admonishment" is

not reversible error unless "real justice has been denied or the defendant has been prejudiced by the inadequate admonishment." *Whitfield*, 217 Ill. 2d at 195; *see also* Rule 402 (requiring "substantial compliance" with its provisions). Because the trial court gave defendant Whitfield no warning about MSR whatsoever, it was clear that due process and Rule 402 were violated in his case. *Id.* at 201.

In *People v. Morris*, 236 Ill. 2d 345, 366 (2010), this Court clarified "what information must be conveyed to ensure that the admonishments given during a plea hearing comply with the requirements of Rule 402 and due process post-*Whitfield*." But, as in *Whitfield*, this Court again declined to establish any "precise formula in admonishing a defendant of his MSR obligation." *Id.* This Court stressed that admonishments "need not be perfect" and should be examined for their "practical and real" effect; it is enough that they "substantially comply" with Rule 402. *Morris*, 236 Ill. 2d at 366. "Substantial compliance" is a fact-specific standard measured by an objective test: whether "an ordinary person in the circumstances of the accused would understand [the admonition about MSR] to convey the required warning." *Id.* at 366-67. An admonishment "that uses the term 'MSR' without putting it in some relevant context" does not suffice. *Id.* at 366. This Court suggested — but did not hold — that "ideally," a trial court's admonishment would (1) "explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea"; (2) be given when "the trial court reviewed the provisions of the plea agreement"; and (3) be "reiterated both at sentencing and in the written judgment." *Id.* at 367; *see also id.* at 368 ("strongly encourag[ing] trial court judges to follow this practice").

B. The Trial Court's Admonishments Substantially Complied With Rule 402(a)(2) and Due Process.

This Court should hold, consistent with the rules enunciated in *Whitfield* and clarified in *Morris*, that as long as the trial court informs a defendant prior to accepting his plea that MSR must follow *any* applicable prison sentence, he has received all the notice and process to which he is entitled, such that due process and Rule 402's "substantial compliance" standard have been satisfied. Under this fact-specific test, there was no error in petitioner's case, and the trial court properly dismissed his postconviction petition at the first stage because it was frivolous and patently without merit, and presented no gist of a constitutional claim. *See* 725 ILCS 5/122-2.1(2).

At the plea hearing, the court first notified petitioner of the minimum and maximum prison terms for first-degree murder, placing him on notice that he would serve time in prison no matter what sentence his negotiated plea ultimately entailed. The court then informed petitioner, without any ambiguity, that any prison sentence for that crime would be followed by a three-year MSR term in his case. *See* SR4-5 (informing petitioner, after reviewing sentencing range for first degree-murder, that "[u]pon *your* release from the penitentiary, there *is* a period of three years of mandatory supervised release, sometimes referred to as parole") (emphases added)).

An ordinary person under the circumstances would have understood these admonishments as a clear notification that any prison term eventually imposed for the offense — including the twenty-two-year sentence that petitioner agreed to moments later as part of his plea — would be followed by a three-year MSR term. Stated differently, it is

not reasonable to conclude that an ordinary person, having heard the trial court's firm warning that (1) he would be sentenced to prison for first-degree murder; (2) any prison term imposed for that offense would include a three-year MSR term; and (3) he would have to serve MSR after his release from the penitentiary, would believe that his negotiated sentence for first degree-murder would *not* include MSR, or that MSR was only a "possible" penalty, as petitioner suggests. When the trial court's MSR admonishment is read within the context of the entire hearing, as is appropriate, it cannot be said that a reasonable person would have failed to understand the implications of his plea, such that "real justice [was] denied." *Whitfield*, 217 Ill. 2d at 195; *cf. Villanueva v. Anglin*, 719 F.3d 769, 778 (7th Cir. 2013) ("[T]he reference to 'mandatory' supervised release suggests that MSR is part of the sentence. Characterizing '*mandatory* supervised release' as a '*possible* penalty' is incongruent.").

Appellate court cases that predate *Morris* have found "substantial compliance" with Rule 402(a)(2) and due process where the trial court, as here, admonished the defendant, after outlining the applicable minimum and maximum sentences, that any prison term imposed consistent with that range includes MSR. *See, e.g.*, *People v. Berrios*, 387 Ill. App. 3d 1061, 1064 (3d Dist. 2009) (admonishment that MSR "was mandatory and would apply to any sentence of imprisonment regardless of his plea" sufficient); *People v. Marshall*, 381 Ill. App. 3d 724, 735-36 (1st Dist. 2008) (admonishment that defendant would have to serve MSR following any prison term sufficient); *People v. Holt*, 372 Ill. App. 3d 650, 653 (4th Dist. 2007) (same; "[t]he State's failure to restate this requirement during its recitation of the plea agreement did not violate Holt's due process rights"); *People v. Borst*, 372 Ill. App. 3d

331, 334 (4th Dist. 2007); *People v. Jarrett*, 372 Ill. App. 3d 344, 351-52 (4th Dist. 2007) (same).[2]

Cases that postdate *Morris* have arrived at the same conclusion on facts similar to those present here. *See, e.g., People v. Lee*, 2012 IL App (4th) 110403, ¶¶ 23-25 (admonishment that "any prison term would be followed by three years' MSR" sufficient); *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 19 (admonishment that "[a]ny period of incarceration would be followed by a period of mandatory supervised release" sufficient); *People v. Andrews*, 403 Ill. App. 3d 654, 665-66 (4th Dist. 2010) (admonishment that defendant must serve one year of MSR "[i]f convicted and sentenced to prison" sufficient)[3];

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[2] *Holt*, *Jarret*, and *Borst* suggested that admonishment error occurs only in the complete absence of MSR warnings, as in *Whitfield*. *See Holt*, 372 Ill. App. 3d at 652-53; *Jarrett*, 372 Ill. App. 3d at 351; *Borst*, 372 Ill. App. 3d at 334. To be sure, in *Morris* this Court explained that error can occur when the trial court mentions MSR but fails to discuss it "in some relevant context" that informs the defendant of the consequences of his guilty plea. 236 Ill. 2d at 366. Nonetheless, each of these cases was correctly decided because, in each case, the trial court sufficiently admonished the defendant that any prison sentence would be accompanied by MSR, even if those admonishments could have been more clearly communicated, as *Jarrett* and *Borst* acknowledged (and as *Morris* later encouraged).

[3] *Andrews* did not "misapprehend" *Whitfield*'s interpretation of Rule 402, as petitioner contends. Br19. In that case, Andrews conceded that the trial court, in outlining possible penalties as required by Rule 402(a)(2), had admonished him that any sentence would include MSR. *Andrews*, 403 Ill. App. 3d at 663. He maintained, however, that the trial court, when it outlined the precise terms of his plea agreement, was obligated to link MSR to the agreed-upon sentence under *Whitfield* and Rule 402(b) (requiring that terms of agreement be stated in open court) because he had negotiated for "inclusion" of MSR in that agreed-upon sentence. *Andrews*, 403 Ill. App. 3d at 663. The appellate court rejected this reasoning as a legal fiction: because MSR is statutorily mandated, it is non-negotiable, and need not be mentioned under Rule 402(b). *Andrews*, 403 Ill. App. 3d at 664. And *Whitfield*, which addressed only Rule 402(a)(2), also did not require the trial court to mention MSR when outlining the terms of the plea. *Andrews*, 403 Ill. App. 3d at 664. Returning to Rule 402(a)(2), the appellate court determined that the trial court substantially complied with that provision when it informed Andrews that any prison term would be followed by MSR. *Andrews*, 403 Ill. App. 3d at 664-65. The court acknowledged that it would be better

People v. Dorsey, 404 Ill. App. 3d 829, 838 (4th Dist. 2010) (admonishment that "[i]f you're sent to prison, there's a period of mandatory supervised release of three years" sufficient); *People v. Davis*, 403 Ill. App. 3d 461, 465 (1st Dist. 2010) (admonishment that defendant "would be required to serve the three years mandatory supervised release" sufficient).

In sum, the trial court informed petitioner, prior to accepting his plea, that MSR must follow any prison sentence ultimately imposed in his case. Any ordinary person pleading guilty under these circumstances would understand that MSR applied to the twenty-two-year negotiated sentence. Petitioner received the notice and process to which he was entitled. Accordingly, his postconviction petition was properly dismissed.

C. No Bright-Line Approach to Rule 402 Compliance Is Warranted.

It appears, on first glance, that petitioner has not asked this Court to abandon its objective test, which instructs that the MSR admonishment need only provide adequate notice to an ordinary person in petitioner's circumstances to "substantially comply" with Rule 402 and applicable precedent. Br11 (arguing that, under objective test, ordinary person in petitioner's circumstances would not understand that MSR applied). But petitioner goes on to suggest, incompatibly, that "substantial compliance" is achieved only when the trial court explicitly links MSR to the particular negotiated sentence; absent such "linking," petitioner contends, due process is violated. Br12 (because court's "reference to MSR does

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practice to link the defendant's agreed-upon sentence with MSR, but declined to endorse an expansion of *Whitfield* in that regard, or to hold that such a procedure was required by Rule 402(b) (a question not addressed by *Whitfield*). *Andrews*, 403 Ill. App. 3d at 665. Thus, *Andrews* did not contradict or misapprehend *Whitfield*.

not explicitly link MSR to [petitioner's] sentence by advising him that a three-year MSR term will be added to his negotiated sentence, it does not comply with due process.").

These two standards cannot coexist, and it is likely for this reason that *Morris* merely encouraged, without requiring, courts to "link" MSR to the actual sentence imposed. Petitioner's approach not only would require precisely the sort of strict — rather than "substantial" — compliance that this Court eschewed in *Whitfield* and *Morris* (in line with Rule 402's express instruction that only "substantial compliance" is necessary). It also would be contrary to the corollary rules in those cases that admonishments need not follow a precise formula; that the defendant's understanding of the admonishments is measured objectively; that the warnings must be reviewed within the context of the entire plea proceeding; and that relief is available only if "real justice" has been denied. *See Morris,* 236 Ill. 2d at 366-67; *Whitfield*, 217 Ill. 2d at 195.

To be sure, there is nothing wrong with continuing to encourage trial courts to "link" MSR to the negotiated sentence in this fashion, as *Morris* explained. But unless this Court is prepared to undermine *Whitfield* and *Morris* on all of these points — a disposition that petitioner has not requested, at least not explicitly — it should not interpret Rule 402's "substantial compliance" language as requiring trial courts to employ a formulaic approach to MSR admonitions, but instead should adhere to the objective, common-sense, contextual test established by those precedents. *See In re Derrico G.*, 2014 IL 114463, ¶ 65 (stare decisis precludes deviation from settled principles of law absent special justification); *see also People v. Fuller*, 205 Ill. 2d 308, 323 (2002) (reaffirming that only "[s]ubstantial compliance" with Rule 402 is necessary to satisfy due process, and that courts may review

record as whole to ascertain whether defendant understood admonishments); *People v. Warship*, 59 Ill. 2d 125, 129 (1974) ("Rule 402 does not require strict compliance but states that there must be 'substantial compliance.'").

Petitioner also references several cases that appear to have adopted the "linking" approach recommended in *Morris*. But those cases are not so clear. While each case purported to grant relief on the basis that the trial court failed to "link" MSR to the negotiated sentence ultimately imposed, each case, on closer review, merely applied the well-settled "substantial compliance" standard and concluded that the admonishment, when read in context, failed to clearly inform the defendant that MSR would attach to any sentence imposed pursuant to the plea. In other words, the problem was not that the trial court failed to directly "link" MSR to the negotiated sentence, but that the trial court failed even to "substantially comply" with Rule 402 in the first place, such that an ordinary person would not understand that MSR was part of the sentence, or would believe that it would attach only if certain contingencies were met. *See, e.g., People v. Burns*, 405 Ill. App. 3d 40, 43 (2d Dist. 2010) (finding error where court's description of potential sentencing range, including "potential" for fine and MSR, did not clearly state that defendant "will" have to serve MSR term, and reaffirming "substantial compliance" standard)[4]; *People v. Daniels*, 388 Ill. App.

[4] The court in *Burns* emphasized that it continued to follow the "substantial compliance" test: that a court need only "convey, with reasonable clarity, that the defendant sentenced to prison as part of a plea agreement *will* have to serve a term of MSR after completing the prison term." 405 Ill. App. 3d at 45 (emphasis in original). But earlier, the court appeared to adopt the strict compliance standard proposed here by petitioner, that the admonishment must "link the term of MSR to the actual sentences that the defendant would receive under his plea agreement and did not convey unconditionally that the MSR would be added to the agreed-upon sentences." *Id.* at 43. As demonstrated, these two standards are irreconcilable.

3d 952, 959 (2d Dist. 2009) (finding error where trial court did not "state or imply that MSR would follow *any* prison term," but only "to the *maximum* sentences authorized by law"; distinguishing *Marshall*, *Borst*, and *Jarrett* on that basis; and acknowledging that "[i]t will often be sufficient for the trial court to mention MSR as part of a general admonition regarding the penalties authorized by law, even though the defendant is not specifically told that MSR will be part of his or her sentence"); *People v. Smith*, 386 Ill. App. 3d 473, 482 (5th Dist. 2008) (finding error where trial court, in outlining sentencing range, stated only that defendant "*could* be subject to 3 years mandatory supervised release"); *People v. Company*, 376 Ill. App. 3d 846, 850-51 (5th Dist. 2007) (finding error where trial court, in outlining possible sentences and MSR, explained that those penalties were available "if you were convicted at trial," creating risk that defendant believed that MSR would not apply if he pleaded guilty); *see also United States ex rel. Miller v. McGinnis*, 774 F.2d 819, 823 (7th Cir. 1985) (finding error where, during guilty plea hearing on multiple counts that included first-degree murder, trial court told defendant that it could impose MSR for each offense "without murder being included," creating risk that defendant was unaware that eventual twenty-year sentence for first-degree murder did not include MSR).[5] And to the extent that any of these cases has adopted a bright-line "linking" approach to MSR admonishments, it would be irreconcilable with *Morris*'s reaffirmation of the "substantial compliance" test.

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[5] Petitioner also cites *People v. Mendez*, 387 Ill. App. 3d 311 (2d Dist. 2008), but that opinion was vacated and remanded by this Court for reconsideration in light of the non-retroactivity rule established in *Morris*. *See People v. Mendez*, 236 Ill. 2d 529 (2010) (table). On remand, the appellate court found that Mendez's *Whitfield* claim was barred by non-retroactivity principles and did not address whether the trial court substantially complied with Rule 402(a)(2). *People v. Mendez*, 402 Ill. App. 3d 95 (2d Dist. 2010).

II. The Postconviction Petition Was Untimely.

Petitioner was convicted and sentenced on March 25, 2009, SR1; C80, and did not file a direct appeal. Instead, he filed his postconviction petition on May 9, 2014, more than three years after his date of conviction. C120. This postconviction petition was untimely. *See* 725 ILCS 5/122-1(c) ("If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence."); *People v. Johnson*, 2017 IL 120310, ¶ 16. This Court may address the timeliness question even though the People did not raise that defense in the appellate court. *See In re Madison H.*, 215 Ill. 2d 364, 371 (2005) ("The rule of waiver . . . is a limitation on the parties and not on the courts.").

Any argument that the delayed filing was not due to petitioner's culpable negligence because, as petitioner claimed in his postconviction petition, he became aware of his MSR obligation only during his incarceration and after the three-year postconviction limitations period had expired, *see* C122-25, would be unavailing. As demonstrated above, the trial court's admonishment at the 2009 plea hearing that petitioner must serve a three-year MSR period upon his release from prison conveyed that information in a manner that an ordinary person would understand. SR4-5. Thus, the record contradicts any claim that petitioner was not aware of his MSR obligation until years later, and forecloses any such argument in favor of excusing untimeliness.

CONCLUSION

The judgment of the appellate court should be affirmed.

March 27, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is fourteen pages.

/s/ David H. Iskowich
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PROOF OF FILING AND SERVICE

Under penalty of law as provided in 735 ILCS 5/1-109 (2014), the undersigned certifies that the statements set forth in this instrument are true and correct, including that the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and was served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by the persons named below on March 27, 2017 before 5:00 p.m., and by placing a copy in a envelope with proper prepaid postage affixed and directed to each person named below at the addresses indicated, and by depositing each envelope in the United States Mail at 100 West Randolph Street, Chicago, Illinois 60601, at the same time and date as indicated above.

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail an original and twelve copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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