No. 122549

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellee, v. JOSEPH GRIFFIN, Defendant-Appellant.	)	Appeal from the Appellate Court of Illinois, First Judicial District No. 1-14-3800 There on Appeal from the Circuit Court of Cook County, Illinois, Nos. 12 CR 13428 & 13 CR 12564 The Honorable Mary Margaret Brosnahan & Thaddeus L. Wilson Judges Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

In separate Cook County cases, defendant pleaded guilty to unlawful use of a weapon (UUW) by a felon and burglary and was sentenced to concurrent five- and six-year terms of imprisonment, respectively. C68, 81, 85, 140; R A3, B3.[1] In both cases, the circuit court denied defendant's motion, filed more than thirty days after sentencing, to correct the mittimus. C142-44; R3; R D2. Defendant appealed from the orders denying the motions to correct the mittimus but did not challenge those orders on appeal. C152. Instead, defendant argued that some of his fees were improper and that he was entitled to per diem credit under 725 ILCS 5/110-14. A3. The Illinois Appellate Court, First District, held that it lacked jurisdiction to address those claims. *Id.* No issue is raised on the pleadings.

ISSUES PRESENTED

1. Whether the appellate court lacked jurisdiction over the UUW appeal because the notice of appeal was untimely.
2. Whether the denial of a motion to correct a mittimus is an appealable "final judgment" under article VI, section 6 of the 1970 Constitution.
3. Whether the appellate court lacked original and revestment jurisdiction to hear the appeal.

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[1] Citations to the common law record appear as "C__." Citations to the reports of proceedings appear as "R __." Citations to defendant's brief and appendix appear as "Def. Br. __" and "A__," respectively.

4. Whether, if the appellate court had jurisdiction, defendant's fee claims were procedurally defaulted.
5. Whether, if the appellate court had jurisdiction, this Court should overrule *People v. Caballero*, which held that a defendant may seek per diem credit under 725 ILCS 5/110-14(a) "at any time and at any stage of court proceedings."

JURISDICTION

Jurisdiction in this Court lies under Supreme Court Rules 315 and 612(b)(2). On November 22, 2017, this Court granted defendant's petition for leave to appeal. *People v. Griffin*, 93 N.E.3d 1087 (Ill. 2017) (table).

STATEMENT OF FACTS

In 2012, police officers stopped defendant Joseph Griffin in a car that had just left the site of a shooting. C22. The officers recovered a revolver from the back seat of the car. *Id.* Defendant admitted that he fired the gun toward a rival gang member. *Id.* The People charged him with several counts of UUW. *Id.* at 27-32. While defendant was in custody for this offense, forensic testing linked defendant to an unsolved burglary: blood left on a broken window contained defendant's DNA. *Id.* at 103. Defendant admitted to police officers that he broke a window and entered the building to steal computer equipment. *Id.*

In separate cases, after entering into fully negotiated plea agreements, defendant pleaded guilty to one count of UUW by a felon (the other counts were *nolle prosequied*) and burglary. *Id.* at 68, 81; R A2-3, B3. For UUW, the

circuit court sentenced defendant to five years in prison, with 682 days of credit for time spent in presentence custody. C85. For burglary, the court sentenced defendant to six years in prison, with 316 days of credit for time spent in presentence custody, to run concurrently with his UUW sentence. *Id.* at 140. In both cases, the circuit court also imposed certain fines and fees. *Id.* at 82-84, 137-39. Defendant neither moved to withdraw his guilty pleas nor appealed his convictions or sentences.

In each case, more than thirty days after sentencing, defendant moved pro se to correct the mittimus, arguing that the Illinois Department of Corrections (IDOC) had miscalculated his custody date by counting fewer days of presentence custody credit than the court had awarded. *Id.* at 142-44. On September 25, 2014, the UUW court denied the motion, and on October 8, 2014, the burglary court did the same. *Id.* at 147.[2] In both cases, the court found that defendant had been awarded all the credit to which he was entitled. R2-3; RD1-2. On November 6, 2014, defendant mailed a notice of appeal for both cases. C148-49.

On appeal, with the assistance of counsel, defendant abandoned his presentence custody credit claim. Instead, defendant challenged some of his fees and requested per diem credit against his fines under 725 ILCS 5/110-14(a). A3. Although both parties agreed that the appellate court had

[2] Two pages in the record are labeled C147: a first C147, followed by an unnumbered page, then a second C147. All references in this brief are to the second C147.

jurisdiction to resolve these claims, the appellate court found that it lacked jurisdiction because the orders denying defendant's motions to amend the mittimus were not final judgments. *Id.* The court also held that it could not have considered defendant's claims in any event because he did not move to withdraw his guilty pleas under Rule 604(d). *Id.*

ARGUMENT

I. Introduction

The appellate court correctly found that it lacked jurisdiction over defendant's appeals. First, though no party addressed the issue below, defendant's notice of appeal was untimely in his UUW case. Second, the orders defendant appealed from were not appealable. Defendant does not argue that this Court's rules specifically provide for an appeal from an order denying a motion to amend the mittimus. The appellate court therefore had jurisdiction only if an order denying a motion to amend the mittimus is a "final judgment." It is not — a mittimus is not a judgment, and neither is an order declining to amend one. Nor did the appellate court acquire jurisdiction on any alternative basis: neither the revestment doctrine nor the appellate court's limited original jurisdiction applied. Because the appellate court lacked jurisdiction, it properly dismissed the appeals.

In the alternative, even if this Court finds that the appellate court had jurisdiction, this Court should reject defendant's claims. Defendant defaulted his challenges to the fees by failing to appeal his sentence (after first moving to withdraw his guilty plea). Under *People v. Caballero*, 228 Ill. 2d 79 (2008),

however, defendant's credit claim could have proceeded in a court with jurisdiction notwithstanding these defaults. But because this case typifies how far through the looking glass *Caballero* has taken the appellate court and practitioners, the People ask this Court to overturn *Caballero* should it determine that the appellate court had jurisdiction.

II. Standard of Review and General Principles

This Court reviews de novo the question of the appellate court's jurisdiction. *In re Det. of Hardin*, 238 Ill. 2d 33, 39 (2010). Although the parties agreed below that the appellate court had jurisdiction, the issue is not forfeited. *People v. Holmes*, 235 Ill. 2d 59, 66 (2009) (no forfeiture where issue "involves a jurisdictional question and [this Court has] an independent obligation to review it"). If the appellate court lacks jurisdiction over an appeal, it may not consider the merits, and the appeal must be dismissed. *Dep't of Cent. Mgmt. Servs. v. AFSCME*, 182 Ill. 2d 234, 238 (1998); *see also People v. Flowers*, 208 Ill. 2d 291, 308 (2004) ("If a court lacks jurisdiction, it cannot confer any relief . . . . The reason is obvious. Absent jurisdiction, an order . . . would itself be void and of no effect.").

The Illinois Constitution of 1970 provides that "[a]ppeals from final judgments of a Circuit Court are a matter of right to the Appellate Court[.]" Ill. Const. 1970 art. VI, § 6. Any order other than a final judgment is appealable only if this Court so provides by rule. *Id.* "Except as specifically provided by those rules, the appellate court is without jurisdiction to review

judgments, orders, or decrees which are not final." *Almgren v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 162 Ill. 2d 205, 210 (1994).

This case does not involve one of the nonfinal orders that may be appealed under this Court's rules. *See* Sup. Ct. R. 604. The appellate court therefore had jurisdiction only if an order denying a motion to amend the mittimus is a "final judgment." "A 'final judgment' is a determination by the circuit court on the issues presented by the pleadings 'which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit.'" *People v. Shinaul*, 2017 IL 120162, ¶ 10 (quoting *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 47). To be a "final judgment," an order must therefore "determine[] the litigation on the merits such that the only thing remaining is to proceed with execution of the judgment." *Shinaul*, 2017 IL 120162, ¶ 10.

III. The Appellate Court Lacked Jurisdiction.

A. Defendant did not timely file a notice of appeal in his UUW case.

The notice of appeal was untimely in defendant's UUW case. To perfect an appeal, the defendant must file a notice of appeal "within [thirty] days after the entry of the final judgment appealed from[.]" Sup. Ct. R. 606(b). The timely filing of a notice of appeal is jurisdictional, and if the notice of appeal is not properly filed, "the reviewing court lacks jurisdiction and must dismiss the appeal." *People v. Patrick*, 2011 IL 111666, ¶ 20. The circuit court denied defendant's motion to amend the mittimus in the UUW case on September 25, 2014. R3; C147. Defendant did not mail his notice of

appeal until November 6, 2014, more than thirty days later. C148-49. Because the notice of appeal was untimely, the appellate court lacked jurisdiction and properly dismissed the appeal.

Though defendant did not receive notice of the order until after the time to appeal had passed, C147, he could have moved to excuse its untimeliness but did not. The appellate court may excuse an untimely notice of appeal within thirty days of the expiration of the time to file a notice of appeal if the party shows a "reasonable excuse." Sup. Ct. R. 606(c). And for up to six months after the deadline, the appellate court may excuse an untimely filing on motion supported by an affidavit (or certification) "that the failure to file a notice of appeal on time was not due to appellant's culpable negligence[.]" *Id.* Because defendant failed to invoke Rule 606(c), the appellate court could not excuse his untimely notice of appeal. *People v. Salem*, 2016 IL 118693, ¶¶ 17-19 (finding that appellate court could not excuse untimely notice of appeal because defendant did not file affidavit in support of extension motion).

B. An order denying a motion to amend the mittimus is not a final judgment.

The appellate court lacked jurisdiction in both cases because an order denying a motion to amend a mittimus is not a final judgment. A mittimus is "a copy of" the sentencing judgment; it is not itself a judgment. 735 ILCS 5/2-1801(a). The mittimus does not "ascertain[] and fix[] . . . the rights of the parties," *see Shinaul*, 2017 IL 120162, ¶ 10, because the sentencing

judgment, not the mittimus, is the "real authority for the detention of a prisoner," *People v. Anderson*, 407 Ill. 503, 505 (1950); *People v. Relerford*, 2017 IL 121094, ¶ 71 (sentence is final judgment in criminal case). Thus, this Court has held that "any error [in the mittimus] affords no basis for the assignment of error in this [C]ourt." *People v. Cox*, 401 Ill. 432, 434 (1948) (citing *People v. Wells*, 393 Ill. 626 (1946)); *see also Anderson*, 407 Ill. at 505 ("[T]here [is no] merit to [defendant's] insistence that the judgments be reversed for the issuance of proper mittim[uses.]").

A circuit court retains authority to rule on a motion to amend the mittimus after judgment, but just as the mittimus is not a judgment, the order on that motion is not a final judgment. Circuit courts have original jurisdiction to "hear and determine a given case." *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011) (quoting *People v. Davis*, 156 Ill. 2d 149, 156 (1993)). The circuit court's jurisdiction ends after it resolves the case; thus, "[g]enerally, a circuit court loses jurisdiction to vacate or modify its judgment [thirty] days after entry of judgment." *Skryd*, 241 Ill. 2d at 40. But circuit courts retain residual jurisdiction beyond thirty days after judgment to determine matters that are "merely incidental to the ultimate rights that have been adjudicated by the judgment," such as fixing clerical errors. *In re D.D.*, 212 Ill. 2d 410, 418 (2004) (citing *Deckard v. Joiner,* 44 Ill. 2d 412, 417 (1970)). These incidental orders that may follow the judgment are not themselves judgments, because the circuit court has already issued its final

judgment resolving the case (here, the sentence). *See, e.g.*, *People v. Salgado*, 353 Ill. App. 3d 101, 106-07 (1st Dist. 2004) (order denying motion for transcripts not final judgment). Amendments to the mittimus are among these "incidental" actions. *People v. Latona*, 184 Ill. 2d 260, 278 (1998); *Baker v. Dep't of Corr.*, 106 Ill. 2d 100, 106 (1985) ("[T]he court retained jurisdiction . . . to correct nonsubstantial matters of inadvertence o[r] mistake such as the amendment of the mittimus."). Indeed, precisely because it is incidental and does not settle any rights between the parties, a mittimus may be amended at any time — even after the court loses jurisdiction to resolve any substantial dispute. *Latona*, 184 Ill. 2d at 278; *cf.* Def. Br. 9.

Though defendant cites several cases from the appellate court entertaining appeals from such incidental orders, they neither bind this Court nor persuasively explain why such orders are appealable. In *People v. Carlberg*, 181 Ill. App. 3d 819 (1st Dist. 1989), the appellate court affirmed an order denying a motion to amend the mittimus without discussing jurisdiction. *See also People v. White*, 357 Ill. App. 3d 1070, 1073 (3d Dist. 2005) (finding jurisdiction over appeal from denial of motion to amend mittimus without discussing whether it was final judgment). In *In re Young's Estate*, 346 Ill. App. 257 (1st Dist. 1952), the appellate court held that a *nunc pro tunc* order was appealable, but the court's discussion of the jurisdictional issue was limited to its bare statement that "[i]t is a final, appealable order," without citation. *Id.* at 266. And in *Kooyenga v. Hertz Equipment Rentals,*

Inc., 79 Ill. App. 3d 1051 (1st Dist. 1979), the appellate court concluded that a party could not appeal from a *nunc pro tunc* order entering a judgment that was accidentally omitted at an earlier date. *Id.* at 1059-60.

Defendant fails to establish that the orders appealed from in this case were final judgments. Defendant argues that the orders were final judgments because they "refus[ed] him more days of time-served credit," Def. Br. 9, but the orders did not affect defendant's credit. Whether defendant's mittimus said that he was entitled to 1,000 days of credit or no credit at all, he would be entitled to the same amount: 682 days for UUW and 316 for burglary, the amounts fixed by his sentencing judgments. C85, 140; *Cox*, 401 Ill. at 434; *Anderson*, 407 Ill. at 505 ("[I]n case of a variance between the language of commitment and the judgment, the latter prevails."). If either mittimus were wrong (and on appeal, defendant has abandoned any claim that either was), defendant could move the circuit court to correct it at any time. *Latona*, 184 Ill. 2d at 278. If IDOC followed an incorrect mittimus to deprive defendant of credits that the sentencing judgment entitled him to, he could seek mandamus relief. *People ex rel. Devine v. Sharkey*, 221 Ill. 2d 613, 616-17 (2006) (mandamus lies to compel performance of clear, non-discretionary duty). The circuit court's orders declining to amend the mittimus did not affect any party's rights or obligations and therefore did not constitute final judgments.

Defendant also maintains that because the orders resolved his motions and left nothing pending, they were final judgments. Def. Br. 9-10. But an order is not a final judgment simply because it is the last one entered in a case. *See, e.g.*, *Sears v. Sears*, 85 Ill. 2d 253, 258 (1981) (order denying postjudgment motion not a final judgment). A final judgment is one that disposes of the complete controversy between parties in the circuit court. *Shinaul*, 2017 IL 120162, ¶ 10. A motion is not, on its own, a controversy between parties — hence, an order denying a motion for summary judgment is not a final judgment even though it ends the parties' disagreement over whether to have a trial. *E.g.*, *In re Estate of Funk*, 221 Ill. 2d 30, 85 (2006). What a final judgment resolves must be a justiciable matter in the constitutional sense, which this Court has variously described as "the issues presented by the pleadings," "the litigation," or "the cause." *Shinaul*, 2017 IL 120162, ¶ 10. A motion to amend the mittimus is not its own "litigation" or "cause"; it is simply a motion incidental to another cause that has already been resolved. *Latona*, 184 Ill. 2d at 278; *Relerford*, 2017 IL 121094, ¶ 71 (sentence is final judgment in criminal case). Thus, an order denying a motion to amend the mittimus is not a "final judgment."

Nor is a motion to amend the mittimus a form of collateral action. Defendant compares a motion to amend the mittimus to a postconviction petition, the denial of which is a final judgment. Def. Br. 10. But postconviction proceedings end in final judgments because postconviction

petitions are actions in their own right — "pleadings" that initiate "litigation" or a "cause." *Shinaul*, 2017 IL 120162, ¶ 10. And while an order disposing of a postconviction petition finally resolves the litigants' rights in the cause started by the petition, an order disposing of a motion to amend the mittimus does not affect the parties' rights at all. *Cox*, 401 Ill. at 434. An order denying a motion to amend the mittimus is therefore not comparable to a judgment denying postconviction relief.

In short, a mittimus is not a judgment, a motion to amend the mittimus is not its own "cause" or "litigation," and an order denying a motion to amend the mittimus is therefore not a "final judgment." The appellate court thus correctly concluded that it lacked jurisdiction.

IV. The Appellate Court Had No Alternative Form of Jurisdiction.

A. The revestment doctrine does not and should not apply to the appellate court.

As discussed, circuit courts ordinarily lose jurisdiction over a cause thirty days after judgment. *People v. Bailey*, 2014 IL 115459, ¶ 14. The revestment doctrine provides a narrow exception to that rule when, after the circuit court has lost jurisdiction, the parties (1) actively participate (2) without objection (3) in proceedings inconsistent with the merits of the prior judgment. *Id.* ¶ 16 (citing *People v. Kaeding*, 98 Ill. 2d 237, 241 (1983)). The revestment doctrine is a "narrow . . . rule" that applies to "a court which has general jurisdiction over the matter" but lost jurisdiction after judgment. *Kaeding*, 98 Ill. 2d at 240.

For many reasons, the revestment doctrine does not apply to the appellate court. First, this Court has never extended the revestment doctrine to the appellate court, and doing so would flout this Court's admonition that "the revestment doctrine is to be applied narrowly." *Bailey*, 2014 IL 115459, ¶ 16. Second, revestment in the appellate court is inconsistent with the bedrock principle that the appellate court cannot obtain jurisdiction by agreement or waiver. *Holmes*, 235 Ill. 2d at 66 (court has independent obligation to review its jurisdiction). Third, revestment allows "a court which has general jurisdiction" that ended after judgment to modify that judgment with the active consent of the parties. *Kaeding*, 98 Ill. 2d at 240. The appellate court has appellate jurisdiction, not general jurisdiction, and (at least here) has no judgment of its own to modify. Fourth, extending revestment would produce no benefit — if the parties agree that the circuit court's judgment was wrong, they can revest jurisdiction in the circuit court. *See* A5-6 (noting that parties could cooperate to correct fine, fee, and crediting errors in circuit court).

Because revestment does not and should not apply to the appellate court, this Court should disapprove *People v. Buffkin*, 2016 IL App (2d) 140792. In *Buffkin*, the defendant first attacked a fee ordered as part of his sentence on postconviction appeal, and the People confessed error. *Id.* ¶ 3. The appellate court concluded that such a claim could be raised only on direct appeal. *Id.* ¶ 10. The court held that the People revested jurisdiction over

defendant's long-concluded direct appeal by confessing error in his postconviction appeal, finding "no basis for holding that [the revestment doctrine] cannot be applied to a late attack in [the appellate] court." *Id.* ¶¶ 11-12. The *Buffkin* court did not enjoy the benefit of briefing from the parties on the revestment doctrine, *id.* ¶ 1, and the People here identify several reasons not to extend the revestment doctrine to the appellate court.

Finally, even if *Buffkin* were correctly decided, it would not extend to this case. Because defendant did not appeal his conviction or sentence, there was no direct appeal in which to revest jurisdiction. *Id.* ¶¶ 11-12.

B. The appellate court did not have original jurisdiction.

The appellate court did not have original jurisdiction to consider defendant's claims. "The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review." Ill. Const. 1970 art. VI, § 6. "[T]he significant language . . . is not the phrase 'original jurisdiction' but is, instead, . . . 'of any case on review.'" *People v. Johnson*, 208 Ill. 2d 118, 139 (2003). In *Johnson*, for instance, the People appealed the suppression of two inculpatory statements under Rule 604(a)(1). *Id.* at 124. The appellate court affirmed their suppression under a legal theory that would have required the suppression of additional statements that the circuit court had not suppressed. *Id.* at 126. This Court held that the appellate court's original jurisdiction did not permit it to order the suppression of those additional statements because they were beyond the scope of the case on review in the appellate court. *Id.* at 140 ("The appellate

court does not . . . obtain jurisdiction over evidence that was not suppressed by the circuit court. Such evidence is simply not part of the case which may be reviewed[.]").

Because original jurisdiction exists only as a complement to the case already on review, the appellate court lacks original jurisdiction when it lacks appellate jurisdiction. None of the appellate court cases defendant cites suggests otherwise. *In re Peasley*, 189 Ill. App. 3d 865, 870 (4th Dist. 1989) (finding original jurisdiction to initiate contempt proceedings against court reporter who refused to prepare transcripts for pending appeals); *Farwell Constr. Co. v. Ticktin*, 84 Ill. App. 3d 791, 806-07 (1st Dist. 1980) (finding original jurisdiction to review denial of postjudgment motion filed after notice of appeal); *People v. Sirinsky*, 110 Ill. App. 2d 338, 341-42 (1st Dist. 1969) (finding original jurisdiction to amend caption in pending appeal).

V. In the Alternative, if This Court Finds that the Appellate Court Had Jurisdiction, It Should Deny Defendant's Claims as Procedurally Defaulted.

Defendant does not argue the merits of his claims in his opening brief and has therefore waived any request for this Court to order that these claims be granted. Sup. Ct. R. 341(h)(7). However, as appellee, the People may raise any argument in support of the judgment below. *In re Veronica C.*, 239 Ill. 2d 134, 150-51 (2010). Because a variety of procedural defaults would have prevented the appellate court from reviewing defendant's claims, this Court should affirm even if it finds that the appellate court had jurisdiction.

A. Defendant's fee challenges are defaulted.

Defendant's fee challenges are defaulted. First, a defendant may not appeal a sentence imposed following a fully negotiated guilty plea unless he first moves to withdraw his plea. Sup. Ct. R. 604(d). Second, "[i]ssues that could have been presented on direct appeal, but were not, are [forfeited]" on collateral review. *People v. Towns*, 182 Ill. 2d 491, 503 (1998) (citations omitted). Third, "any issues to be reviewed" in a collateral appeal "must be presented in the petition filed in the circuit court." *People v. Jones*, 211 Ill. 2d 140, 148 (2004). Here, defendant did not move to withdraw his guilty pleas, appeal his sentences, or challenge the fees in his motions to amend the mittimus. Therefore, even if the appellate court had jurisdiction, defendant could not have challenged his fees in this appeal.

B. Although defendant's credit claim was not defaulted under *Caballero*, this Court should overrule *Caballero*.

Unlike defendant's fee challenges — or virtually any other statutory claim, for that matter — per diem credit can be raised in any court with jurisdiction despite the above defaults under *People v. Caballero*, 228 Ill. 2d 79 (2008). In *Caballero*, the defendant sought per diem credit under 725 ILCS 5/110-14(a) for the first time on postconviction appeal. 228 Ill. 2d at 82. Although he had not raised the claim on direct appeal or in his postconviction petition, and although the statutory credit claim was noncognizable on postconviction review, this Court held that the defendant could nonetheless raise it for the first time on postconviction appeal. *Id. at* 87-88. Because

section 110-14 allows the credit "upon application of the defendant" without specifying when or where it should be raised, this Court held that defendants may apply "at any time and at any stage of court proceedings, even on appeal in a postconviction proceeding." *Id.* at 88.

This Court should overrule *Caballero* and hold that defendants may not seek the section 110-14 credit for the first time on collateral appeal. "The doctrine of *stare decisis* expresses the policy of the courts to stand by precedents and not to disturb settled points." *People v. Sharpe*, 216 Ill. 2d 481, 519 (2005) (internal quotation marks omitted) (quoting *Neff v. George*, 364 Ill. 306, 308-09 (1936)). However, "*stare decisis* is not an inexorable command," and this Court may overrule prior decisions upon a showing of "special[] justifi[cation]," "good cause," or "compelling reasons." *Sharpe*, 216 Ill. 2d at 519-20 (internal citations and quotation marks omitted). "Good cause to depart from *stare decisis* exists when governing decisions are unworkable or are badly reasoned." *Id.* at 520 (citing *People v. Jones*, 207 Ill. 2d 122, 134 (2003)).

There is good cause to overturn *Caballero*. First, because the void sentence doctrine of *People v. Arna*, 168 Ill. 2d 107 (1995), prevailed when this Court ruled in *Caballero*, the per diem credit was one of many statutory sentencing challenges that parties could raise in any court at any time. But this Court abolished the void sentence doctrine in *People v. Castleberry*, 2015 IL 116916, ¶ 1. *Caballero* is now an anomaly: per diem credit is the only

statutory sentencing claim that can be raised in any court at any time. *But see People v. Young*, 93 N.E.3d 1079 (Ill. 2017) (table) (granting petition for leave to appeal to determine whether presentence custody credit can be raised for first time on collateral appeal). *Castleberry* therefore casts doubt on *Caballero*'s reasoning and continued viability.

Second, *Caballero* relied in part on a policy determination that experience has since undermined. *Id.* at 88 (finding that allowing per diem credit claims promotes judicial efficiency). Though it may be efficient in an individual case to grant per diem credit whenever and wherever it is first sought, *Caballero* created systemic inefficiency. Trial courts and advocates now face no consequence for overlooking the section 110-14 credit issue in the trial court, where the issue could readily be resolved, while appellate advocates must search for credit claims in every collateral appeal, regardless of what was raised below. As a result, *Caballero* shifted credit claims toward the appellate court in unrelated appeals and away from the sentencing hearing. As the court below noted, the appellate court fielded eighty-three per diem credit claims in 2016 alone. A4. A Westlaw search conducted while preparing this brief revealed that the appellate court resolved 735 cases concerning the per diem credit in the decade since *Caballero* — nearly three times as many as in the three decades prior. *Caballero* therefore did not create the efficiencies it anticipated; to the contrary, it shifted claims toward a forum that requires time-consuming briefing, cannot receive evidence, and

would need to remand to another court to resolve factually contentious claims. *Sharpe*, 216 Ill. 2d at 520 (unworkability is good cause to overrule precedent). It should be overruled.

CONCLUSION

This Court should affirm the judgment of the Illinois Appellate Court, First District.

May 8, 2018

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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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is nineteen pages.

/s/ Daniel B. Lewin
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 8, 2018 the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was electronically filed with the Clerk of the Supreme Court of Illinois and served upon the following by e-mail:

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

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