No. 122956

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Fourth District,
Plaintiff-Appellant,	)	No. 4-16-0920
	)	
	)	There on Appeal from the Circuit
v.	)	Court for the Eleventh Judicial
	)	Circuit, McLean County, Illinois,
	)	No. 13-CF-1447
	)	
OCTAVIUS LORENZO JOHNSON,	)	The Honorable
	)	Scott D. Drazewski,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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ARGUMENT

When a defendant pleads guilty pursuant to a negotiated plea agreement in which the State makes a sentencing concession, Rule 604(d) bars him from appealing any sentence that the trial court imposes within the terms of the plea agreement, with narrow exceptions for statutorily unauthorized sentences or sentences imposed under facially unconstitutional statutes. This Court's decisions interpreting Rule 604(d) have consistently recognized that when a prosecutor and defendant bargain for a particular sentence or sentencing range in exchange for a guilty plea, "the guilty plea and the sentence 'go hand in hand' as material elements of the plea bargain." *People v. Evans*, 174 Ill. 2d 320, 332 (1996); *see also People v. Linder*, 186 Ill. 2d 67, 79 (1999) (Freeman, C.J., specially concurring) ("the State's sentence cap recommendations . . . are *part and parcel* of its agreements with defendants"). Rule 604(d) thus promotes evenhandedness in plea bargaining by preventing defendants who are sentenced within the terms of a negotiated-as-to-sentence plea agreement from "unfairly bind[ing] the State to the terms of the plea agreement while giving the defendant the opportunity to avoid or modify those terms." *Linder*, 186 Ill. 2d at 74.

Defendant seeks a rule that would allow him to retain the substantial sentencing benefits he received under his plea agreement, while depriving the State of the finality that was a principal benefit of its bargain. But as the People's opening brief explained, defendant's position finds no support in the

history of Rule 604(d) or this Court's decisions interpreting it. Further, defendant's construction of Rule 604(d) would impede the efficient administration of a criminal justice system that depends heavily on an effective system of plea bargaining, and it cannot be squared with Rule 605(c)'s related admonishments. None of defendant's contrary arguments is compelling. He misreads several of this Court's decisions in arguing that precedent supports his position. And his contention that it would be unfair not to allow him to challenge the trial court's procedural errors at the sentencing hearing — while retaining the sentencing benefits that the State extended as part of the plea agreement — treats the plea-bargaining process as though it were "a one-sided affair." *In re Derrico G.*, 2014 IL 114463, ¶ 99. That is a recipe for undermining the plea-bargaining system.

A. Defendant misconstrues this Court's Rule 604(d) precedent.

At the outset, defendant mistakenly contends that *People v. Heider*, 231 Ill. 2d 1 (2008), contradicts the People's construction of Rule 604(d) because there the Court "reversed a sentence that resulted from a negotiated guilty plea on the basis of an improper sentencing factor." Def. Br. 11.[1] But the People's construction of Rule 604(d) would not bar a sentencing appeal under the circumstances presented in *Heider*. Heider pleaded guilty in exchange for the State's agreement to dismiss additional charges and

[1] "Def. Br." refers to defendant's brief. "Peo. Br." refers to the People's opening brief. "A__" refers to the appendix to the People's opening brief.

recommend a sentence of six years. 231 Ill. 2d at 5-6. The trial court accepted the plea but later rejected the State's recommendation and imposed a sentence of ten years. *Id.* at 11. As the People's opening brief explained, Rule 604(d) prohibits a defendant who pleaded guilty pursuant to a negotiated plea agreement from appealing any "sentence imposed *within the terms of the plea agreement*," Peo. Br. 8 (emphasis added), because by negotiating for a specific sentence or sentencing range "the defendant 'implicitly undertakes to accept' any sentence imposed within the agreement's terms and 'to admit that the sentence is fair and justified under the circumstances of the case,'" *id.* at 16-17 (quoting *People v. Stacey*, 68 Ill. 2d 261, 266 (1977)). But neither the "contract law principles" that "govern[ ]" plea agreements, *Evans*, 174 Ill. 2d at 326, nor the notions of "good public policy and common sense" that animate Rule 604(d), *id.* at 332, prevent a defendant from appealing a sentence that is *longer* than what he bargained for, as Heider did.[2]

Defendant also misreads this Court's decisions in *People v. Williams*, 179 Ill. 2d 331 (1997), and *People v. Wilson*, 181 Ill. 2d 409 (1998), which adopted a narrow exception to Rule 604(d) that allows defendants who pleaded guilty pursuant to negotiated plea agreements to appeal sentences

[2] In any event, *Heider* "neither considered nor addressed" whether Rule 604(d) barred the defendant's sentencing challenge and thus "cannot be read as expressing any view by this court as to the implications of [Rule 604(d)] for the circumstances present in that case." *In re N.G.*, 2018 IL 121939, ¶ 67.

that are statutorily unauthorized.[3] *See* Peo. Br. 12-13. Defendant contends, and the appellate court held, that the "logic" of *Williams* and *Wilson* supports expanding the exception recognized in those cases to any claim of clear procedural error in imposing a sentence, Def. Br. 12-14, or at least to claims that the trial court "fashion[ed] a sentence based on improper sentencing factors," A10, ¶ 39. In the appellate court's view, "the effect of the trial court's act of imposing a void sentence or a sentence not authorized by statute is similar to the act of fashioning a sentence based on improper sentencing factors in that [in each instance] the court has imposed a sentence which does not comply with the law." *Id.*

But *Williams* and *Wilson* rested squarely on the now-abolished void-sentence rule. *See Williams*, 179 Ill. 2d at 333 (holding that Rule 604(d) did not bar claim that "sentence was void" because trial court had no statutory "authority to impose" it); *Wilson*, 181 Ill. 2d at 413 (holding that Rule 604(d) did not bar "a challenge to a trial court's statutory authority to impose a particular sentence"). And that rule rested on the distinction between a court imposing a sentence that it had no statutory authority (and hence, as it was then thought, no jurisdiction or power) to impose, *see People v. Castleberry*, 2015 IL 116916, ¶ 13; *People v. Arna*, 168 Ill. 2d 107, 113 (1995), and a court

[3] This Court has recognized a similar exception, which likewise does not apply here and which defendant has not invoked, for sentences that are based on facially unconstitutional (and thus void *ab initio*) statutes. *See* Peo. Br. 13 n.4 (citing *People v. Guevara*, 216 Ill. 2d 533, 542 (2005)).

committing a procedural error in fashioning an otherwise authorized sentence, *see People v. Davis*, 156 Ill. 2d 149, 156 (1993) ("[O]nce a court has acquired jurisdiction, no subsequent error or irregularity will out the jurisdiction thus acquired."). Thus, *Williams* and *Wilson*, to the extent they remain viable, stand for and support only the limited principle "that challenges to the court's *power to impose a particular sentence* may be raised on appeal from a [negotiated] guilty plea." *People v. Jackson*, 199 Ill. 2d 286, 300 (2002) (emphasis added).

Defendant similarly misconstrues *People v. Diaz*, 192 Ill. 2d 211 (2000), which held that Rule 604(d) barred a defendant who pleaded guilty pursuant to a negotiated plea agreement from appealing his sentence on the ground that "the trial court improperly allowed certain evidence to be introduced during the sentencing proceedings." *Id.* at 217-18. The defendant there sought to avoid this result by invoking the exception recognized in *Williams* and *Wilson*, but the Court had little difficulty distinguishing those cases as "factually inapposite." *Id.* at 226. Defendant contends that what made *Williams* and *Wilson* unlike *Diaz* is that the trial courts in *Williams* and *Wilson* "ha[d] no discretion and ha[d] clearly violated the law" in imposing statutorily unauthorized sentences — just as (he contends) the trial court here committed a "clear violation" of law in relying on inapplicable aggravating factors in fashioning his sentence — while the trial court in *Diaz* supposedly only abused its discretion in admitting the improper evidence.

Def. Br. 15-16. But *Diaz* was clear: the "defendant's reliance upon *Williams* and *Wilson* [was] misplaced" because "no allegation ha[d] been made . . . that defendant's sentence [was] statutorily *void*." 192 Ill. 2d at 226 (emphasis added). It was the absence of a contention of voidness, rather than some unmentioned distinction between an abuse of discretion and a violation of a clear legal rule, that barred Diaz's sentencing appeal under Rule 604(d).

B. Allowing defendants to appeal sentences imposed pursuant to negotiated plea agreements would vitiate such agreements.

The construction of Rule 604(d) adopted by the appellate court and urged by defendant here would allow defendants who plead guilty pursuant to negotiated plea agreements and receive sentences within the agreements' terms to retain all the benefits of their plea agreements while depriving the State of one of the main benefits that make such agreements a mutually advantageous option. Defendant does not dispute that he received a substantial sentencing benefit from his plea agreement. *See* Def. Br. 23 (noting that defendant "do[es] not wish to withdraw [his] favorable plea[ ]"). In exchange for defendant's guilty plea to a Class 1 felony, the State dismissed a Class X charge and further agreed to cap defendant's sentence on the Class 1 offense at two years below the statutory maximum, which combined to reduce defendant's sentencing exposure by more than half. The trial court then imposed a sentence two years below that substantially reduced maximum. As is often the case for defendants "who see[ ] slight

possibility of acquittal, the advantages" of this bargain for defendant "are obvious." *Brady v. United States*, 397 U.S. 742, 752 (1970). Indeed, the "desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities . . . authorized by law," *id.* at 751, was likely "the driving force behind [defendant's participation in] the plea bargaining process," *People v. White*, 2011 IL 109616, ¶ 37 (Theis, J., specially concurring).

But "plea agreements [are] not [ ] one-sided affair[s]." *Derrico G.*, 2014 IL 114463, ¶ 99. The "other half of the contractual equation is the benefit of the bargain accruing to the State." *People v. Donelson*, 2013 IL 113603, ¶ 19. In general, plea bargaining allows the State to "prompt[ly] dispos[e] of cases, preserve[ ] finite judicial and financial resources, and . . . focus its prosecutorial efforts where they are most needed." *Id.* ¶ 18. And where, as here, the parties agree to sentencing terms that "limit[ ] [the State's] ability to argue at sentencing for a sentence from the full panoply of [available] penalties," *Linder*, 186 Ill. 2d at 79 (Freeman, C.J., specially concurring), the agreement allows the State to conserve the time and resources that it might otherwise have to devote to defending the sentence on appeal. *See* Peo. Br. 17 (citing *United States v. Hare*, 269 F.3d 859, 861 (7th Cir. 2001)).

Defendant contends that he should be allowed to appeal the trial court's "clear procedural error in crafting [his] sentence" because he did "not waive[ ] . . . the right to a fair sentencing hearing . . . by simply pleading

guilty." Def. Br. 17-19. But defendant did not simply plead guilty. He pleaded guilty in exchange for, among other things, a sentencing concession by the State. As this Court has long recognized, by doing so he "implicitly undert[ook] to accept the sentence of the court and to admit that [it] is fair and justified under the circumstances." *People v. Stacey*, 68 Ill. 2d 261, 266 (1977). He is thus in no position to argue that a sentence within the range that he agreed to accept is unfair or calls into question "the integrity of the judicial process." Def. Br. 18. That the trial court might commit a procedural error in determining the appropriate sentence within the reduced sentencing range that defendant bargained for was "a risk [defendant] assume[d] as part of his bargain." *Linder*, 186 Ill. 2d at 74. Had he been "unwilling to accept that risk" — that is, had he valued the right to appeal his eventual sentence more than he valued the reduced sentencing range offered by the State — he "should not [have] agree[d] to [the sentencing] cap" as part of the plea agreement. *Id.*

The appellate court and defendant contend that the contract law doctrine of frustration of purpose supports allowing defendant to appeal the trial court's sentence because, in their view, "the basic assumption" underlying the parties' plea agreement was that "the trial court [would] conduct a proper sentencing hearing and consider only proper sentencing factors." A9, ¶ 35; *see also* Def. Br. 21. But there is no reason to think that the plea agreement was premised on the assumption that the trial court

would make no errors at the sentencing hearing, let alone that securing an error-free sentencing hearing was defendant's "principal purpose" and "so completely the basis of the contract that, as both parties underst[oo]d, without it the transaction would make little sense." *People v. Shinaul*, 2017 IL 120162, ¶ 36 (Theis, J., dissenting) (quoting Restatement (Second) of Contracts § 265 and cmt. a). Because trial judges are human, it is an unavoidable fact that they will occasionally make errors. Defendant could have retained his right to challenge any such sentencing errors on appeal by not bargaining for a sentencing concession from the State. Instead, he bargained away the possibility of appellate review of potential sentencing errors in exchange for the certainty of a lower sentencing range. And the State bargained away the possibility of securing a sentence within the full statutory range in exchange for the certainty that any sentence imposed within the reduced range would be final. The basic assumption of the parties' agreement was that the trial court would impose a sentence within the agreed-to range, not that the trial court would make no errors along the way.

That defendant's principal purpose in entering the plea agreement was to secure a reduced sentencing range rather than an error-free sentencing hearing is evidenced by the fact that, even now, he has no desire to withdraw his plea and return the parties to their original positions, which would allow the State to reinstate the dismissed charges and argue for a sentence within the full statutory range. Defendant characterizes the option to seek

withdrawal of his plea as a "Hobson's choice" that would require him to forgo the benefits of his "favorable plea[ ]" in order to insist on his right to "a fair sentencing hearing." Def. Br. 22-23. But this "dilemma . . . is indistinguishable from any of a number of difficult choices that criminal defendants face every day," particularly in "[t]he plea bargaining process." *United States v. Mezzanatto*, 513 U.S. 196, 209 (1995). And while defendant's preferred interpretation of Rule 604(d) would benefit him now, it is unclear that it would be beneficial to defendants as a class going forward. A rule that allowed defendants to appeal sentences even after negotiating for favorable sentencing concessions from the State would make the State less likely to offer such concessions, or at the very least more likely to offer less favorable ones, to offset the loss of finality that is now one of the principal benefits it derives from such agreements.

Defendant invokes the United States Supreme Court's recent decisions in *Class v. United States*, 138 S. Ct. 798 (2018), and *Rosales-Mireles v. United States*, 138 S. Ct. 1897 (2018), *see* Def. Br. 18-20, but neither decision supports his argument. *Class* held that a defendant's guilty plea did not bar him "from challenging the constitutionality of the statute of conviction" on appeal because the contention implicated the government's "power to criminalize" the defendant's conduct. 138 S. Ct. at 803, 805; *see id*. at 804 (recognizing that "a guilty plea does not bar a claim on appeal where on the face of the record the court had no power to enter the conviction or impose the

sentence") (internal quotation marks omitted). But as discussed above, this Court has already recognized exceptions to Rule 604(d)'s bar on appeals following negotiated guilty pleas for challenges to a trial court's statutory authority to impose a particular sentence and to the facial constitutionality of the sentencing statute. *See supra* pp. 3-5 & n.3; Peo. Br. 12-13. *Class* provides no support for a far broader exception that would allow defendants who plead guilty and receive sentences within the range of their negotiated plea agreements to appeal any procedural error committed by the trial court in fashioning the sentence so long as the alleged error supposedly involved the fairness or integrity of the sentencing hearing.

Rosales-Mireles is likewise unhelpful. There, the Court held that a federal trial court's error in calculating a defendant's sentencing range under the federal sentencing guidelines "ordinarily will satisfy" the fourth prong of the federal plain error test, which requires a showing that a forfeited error "seriously affects the fairness, integrity or public reputation of judicial proceedings." 138 S. Ct. at 1905, 1908 (internal quotation marks omitted). But the issue here is not whether a trial court's reliance on improper aggravating factors at sentencing constitutes plain error under Illinois law, but whether a defendant implicitly waives any challenge to such error by accepting sentencing concessions from the State in exchange for pleading guilty. And even in the plain error context, a negotiated-as-to-sentence plea agreement would likely constitute a sufficient "countervailing factor[ ]" that

"preserved" "the fairness, integrity, and public reputation of the proceedings" despite a procedural error at the sentencing hearing. *Id.* at 1909.

C. Rule 604(d) must be read in light of its purpose in order to avoid a conflict with Rule 605(c) that would produce an absurd result.

Defendant contends that Rule 604(d)'s literal language — that "[n]o appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive" — must be interpreted to permit his sentencing appeal because a contrary reading would render the rule's terms superfluous. Def. Br. 24. But defendant does not dispute that the relevant provision of Rule 604(d) was intended to codify this Court's decisions in *Evans*, *Williams*, *Wilson*, *Linder*, and *Diaz*. *See* Peo. Br. 14. As the People's opening brief explained, the rule's language must be interpreted consistently with those decisions, absent any indication that the rule's framers intended to supplant rather than codify existing law. *See id.* (citing *People v. Jones*, 214 Ill. 2d 187, 199 (2005)). Indeed, in *Evans*, which addressed a prior version of Rule 604(d), this Court looked past the rule's "plain language" and focused instead on both its "main purpose" and the framers' intent to codify this Court's prior decisions. 174 Ill. 2d at 328-31. This Court should do the same here.

Defendant likewise does not dispute that the appellate court's construction of Rule 604(d) places it in tension with Rule 605(c) by giving defendants who plead guilty pursuant to negotiated plea agreements a right to challenge ordinary sentencing errors on appeal without advising them of

that right or admonishing them that they must preserve their contentions of error in a motion to reconsider sentence. *See* Peo. Br. 20-21. In other words, the appellate court's holding creates a near limitless amount of sentencing claims appealable under Rule 604(d), *see id.* at 18-19, and then implicitly accepts that those claims will regularly be forfeited due to insufficient admonishments under Rule 605(c). *See* A10-11, ¶ 41 (recognizing that its decision "creates the anomalous situation where a trial court, which strictly complies with Rule 605(c), does not admonish a defendant with respect to his right to file a motion to reconsider his sentence in a case where he does not seek to challenge his sentence as merely excessive"). That is the type of "absurd, inconvenient, or unjust result" that the framers of Rules 604(d) and 605(c) could not have intended. *People v. Johnson*, 2017 IL 120310, ¶ 15; *see People v. Dominguez*, 2012 IL 111336, ¶ 13 (explaining that Rule 605(c)'s admonishments are intended to "complement Rule 604(d) and serve as a corollary to [its] requirements" for appeals following negotiated guilty pleas).

Defendant notes that the exception to Rule 604(d) recognized in *Williams* and *Wilson* is already inconsistent with Rule 605(c) because it allows defendants who plead guilty under negotiated plea agreements to challenge statutorily unauthorized sentences on appeal even though Rule 605(c) does not require the court to admonish them of that right. Def. Br. 25. But as discussed above, *Williams* and *Wilson* are vestiges of the now-discarded void-sentence rule. And in any event, because the narrow category

of claims appealable under those decisions — challenges to statutorily unauthorized sentences — will be subject to review under the second prong of the plain error test even if not preserved in a motion to reconsider sentence, *see People v. Fort*, 2017 IL 118866, ¶ 19, any tension between those decisions and Rule 605(c) is minimal and will not produce "absurd, inconvenient, or unjust result[s]." *Johnson*, 2017 IL 120310, ¶ 15.

By contrast, as the appellate court recognized, "a trial court's consideration of an improper sentencing factor [does not] automatically constitute[ ] plain error sufficient to overcome forfeiture." A13, ¶ 56. The same is no doubt true of the numerous other types of procedural errors at sentencing that would be appealable under the appellate court's construction of Rule 604(d). In these instances, a defendant will be unable to excuse a forfeiture under the plain error doctrine's "narrow and limited exception" unless "the evidence at the sentencing hearing was closely balanced, or [ ] the error was so egregious as to deny the defendant a fair sentencing hearing." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Even if some defendants are able to surmount this high bar, many likely cannot, resulting in the forfeiture of claims that would otherwise be appealable under the appellate court's construction of Rule 604(d) solely because Rule 605(c)'s admonishments were lacking.

Indeed, the appellate court's opinion illustrates the significant tension between Rule 605(c) and its construction of Rule 604(d) that in many cases

will not be remedied by the plain error doctrine. While the appellate court purported to find second-prong plain error here, it did so only because the trial court relied on *two* improper aggravating factors, which "raise[d] the seriousness of the court's error," and because it "appear[ed] from the record" that the errors "impacted the court's sentencing decision." A13, ¶ 55. That reasoning suggests either that the court found first-prong plain error or that it applied a novel combination of the two prongs. Either way, the appellate court appeared to recognize that a trial court's consideration of an improper aggravating factor (let alone the other types of common sentencing error that likely would be appealable under its decision) is not the type of error that "is so serious that it affect[s] the fairness of the defendant's [sentencing hearing] and . . . the integrity of the judicial process" and thus constitutes plain error "regardless of the closeness of the evidence." *People v. Clark*, 2016 IL 118845, ¶ 42.[4]

In other words, under the appellate court's construction of Rule 604(d), defendants sentenced following negotiated guilty pleas would be permitted to

[4] That understanding is consistent with *People v. Martin*, 119 Ill. 2d 453 (1988), where this Court noted that the trial court's reliance on an improper aggravating factor "affected the defendant's fundamental right to liberty . . . and impinged on her right not to be sentenced based on improper factors," but ultimately found the claim subject to plain error review only after concluding that "[t]he evidence at the sentencing hearing weighed heavily in the defendant's favor." *Id.* at 458-59; *see People v. Rathbone*, 345 Ill. App. 3d 305, 312 (4th Dist. 2003) (concluding that *Martin* rested on this Court's "determin[ation] that the evidence at the defendant's sentencing hearing was closely balanced").

raise a broad array of sentencing claims on appeal, but would often find their claims forfeited due to insufficient admonishments under Rule 605(c) and outside the scope of the plain error doctrine's "narrow and limited exception" to the forfeiture rule. *Hillier*, 237 Ill. 2d at 545. Because that reading of Rule 604(d) "is at odds with" Rule 605(c)'s complementary purpose, it "must yield." *Johnson*, 2017 IL 120310, ¶ 21. The better reading of Rule 604(d) — which is consistent with its history and purpose and minimizes any tension with Rule 605(c) — is that a defendant who pleads guilty pursuant to a negotiated plea agreement may not appeal any statutorily authorized sentence imposed within the terms of the agreement.

CONCLUSION

For the reasons discussed above and in the People's opening brief, this Court should reverse the appellate court's judgment and remand with directions to dismiss defendant's appeal.

August 30, 2018

Respectfully submitted,

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RULE 341(c) 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(c) certificate of compliance, and the certificate of service is seventeen pages.

/s/ Eric M. Levin
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 30, 2018, the **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the email addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 13 copies of the **Reply Brief of Plaintiff-Appellant People of the State of Illinois** to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eric M. Levin
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