UIC Law Review

Volume 53 | Issue 4 Article 6

2021

A Hallmark of Injustice: Illinois Sentencing Regulations Fail Defendants and the Judicial System, 53 UIC J. Marshall L. Rev. 1009 (2021)

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A HALLMARK OF INJUSTICE: ILLINOIS SENTENCING REGULATIONS FAIL DEFENDANTS AND THE JUDICIAL SYSTEM

ALLISON TRENDLE*

I. INTRODUCTION

Justice Seymour Simon[1] wrote, "[T]he absence, or refusal, of

*JD, UIC John Marshall Law School 2021. Thank you to Justice Michael B. Hyman, Dr. Ann Jordan, Judge Sheila Murphy (ret.), and Professors Hugh Mundy and Michael Seng for all of your inspiration, words of encouragement, and assistance through the writing process. A special thank you to my staff editor and every member of the JMLR Board who took the time to make my comment the best that it could be. This comment is dedicated to all of my professors at UIC John Marshall Law School and Lewis University who taught me that there can be no justice without recognizing human dignity.

1. Trevor Jensen & Joseph Sjostrom, *Seymour Simon: 1915-2006*, CHICAGO TRIBUNE (Sept. 27, 2006), chicagotribune.com/news/ct-xpm-2006-09-27-0609270191-story.html [perma.cc/L7GS-CP9N]. Justice Simon grew up in Illinois and graduated from Northwestern University's law school in 1938. *Id.* He rose to fame in Chicago's Democratic party over clashes with other Democrats, including Richard M. Daley, as he refused to follow party politics. *Id.* He spent the first part of his legal career as an attorney and remained involved in local politics before moving to the Appellate Court. *Id.* In 1980, Justice Simon beat Judge Francis Lorenz, the party choice, for his seat on the Illinois Supreme Court. *Id.* As an Illinois Supreme Court justice, Justice Simon

reasons [for a sentence] is a hallmark of injustice."[2]

A young, black man stands in front of a judge at his sentencing trial. At nineteen years old, the judge and attorneys have decades on him. He might be the only African American in the room. Police officers found forty grams of cocaine on the young man, and a jury convicted him of violating 720 ILCS 570/401. Section 401 makes it unlawful for a person to possess a controlled substance with the intent to deliver it.[3]

Now, his public defender pleads with the judge for leniency. He graduated high school the year before and dreams of going to college on a scholarship. His mom raised him as a single mother, and he turned to dealing drugs in an attempt to help provide for his younger siblings. He had never been in trouble with the law before this incident. Police officers found no weapons on him, and nobody has accused him of committing any violence. He's a great candidate for rehabilitative measures. In fact, he has already taken advantage of several programs at the jail and plans on completing college courses and job training while incarcerated. He has begun to mentor other incarcerated youths at the jail. Justice, his attorney insists, calls for the young man to be sentenced towards the lower end of the sentencing range set out in 720 ILCS 570/401 (a)(2)(A). Section 401(a)(2)(A) lays out the legislature-created sentencing range for the crime.[4] For possession with intent to deliver fifteen to ninety-nine grams of cocaine, the statute calls for six to thirty years of incarceration.[5]

After listening to the Public Defender and State's Attorney speak, the judge states, "I've heard arguments from the defense and prosecution. After considering the arguments and sentencing factors, I think a sentence of twenty-five years incarceration is appropriate." The judge offers no other explanation for why he just gave the young man a sentence longer than he has been alive.

On appeal, an Appellate Defender argues what Justice Simon argued in his *Davis* dissent:[6] The absence of a statement of reasons is unjust. The Appellate Court, with its hands tied, dismisses the argument because of a single Illinois Supreme Court decision: *People v. Davis*.[7] Ultimately, the court affirms the sentence, and the young man emerges from prison, eventually, as a middle-aged man.

This hypothetical scenario represents the reality for many

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wrote almost 200 majority opinions and nearly as many dissents. *Id.* He dissented in all death penalty cases and repeatedly wrote about the unconstitutionality of the death penalty. *Id.* He was the sole dissenter in *People v. Davis* in 1982. 93 Ill. 2d 155, 163 (1982) (Simon, J., dissenting).

2. People v. Davis, 93 Ill. 2d 155, 163 (1982) (Simon, J., dissenting).

3. 720 ILL. COMP. STAT. 570/401 (2012).

4. *Id.* (a)(2)(A).

5. *Id.*

6. *Davis*, 93 Ill. 2d at 163.

7. *Id.* at 162 (holding that sentencing judges do not need to issue a statement of reasons when pronouncing a sentence).

individuals in the Illinois criminal court system.[8] Illinois law does not require sentencing courts to explain the sentence,[9] which leaves defendants dependent on trial judges to go above-and-beyond the law and explain their reasoning. As Justice Simon noted in his dissent in *People v. Davis*,[10] Illinois denies its defendants justice by not offering them any insight into the judge's reasoning.

Illinois sentencing procedure differs from the systems in the federal courts and several other state courts: Federal and other state systems require sentencing judges to explain their reasoning in imposing a particular sentence.[11] Requiring a statement of reasons: (i) encourages judicial transparency, (ii) promotes justice for defendants, (iii) aids appellate review, (iv) better effectuates legislative intent, and (v) provides a better fit of sentencing procedures to sentencing objectives. Justice requires Illinois to revisit *People v. Davis* and overturn the holding that allows trial judges to pronounce a sentence without giving any reasons.

Part II of this Comment will discuss the background of sentencing in America and the Illinois decision in *Davis*. Part III of this Comment will analyze the effects *Davis* had on sentencing law and compare Illinois sentencing law to that in other jurisdictions. Part IV of this Comment will call for overturning *Davis* and mandating that judges issue a statement of reasons with each sentence.

II. BACKGROUND

Part A of this section will discuss the history and purpose of sentencing in America. Part B will examine modern sentencing objectives. Part C will discuss *People v. Davis* and examine both the

8. *See* People v. Bryant, 2016 IL App (1st) 140421, ¶ 30 (Hyman, J., concurring) (citing People v. Spicer, 379 Ill. App. 3d 441, 468-69 (1st Dist. 2007); People v. Jackson, 375 Ill. App. 3d 796, 802 (3d Dist. 2007); People v. McDonald, 322 Ill. App. 3d 244, 250-51 (3d Dist. 2001); People v. Williams, 223 Ill. App. 3d 692, 701 (3d Dist. 1992)) (discussing the defendant's twenty-one year sentence, which was given without a statement of reasons by the trial court); *see also Jackson*, 375 Ill. App. 3d at 807 (Wright, J., concurring in part and dissenting in part) (discussing the twenty-one-year-old defendant's twenty year prison sentence)). Justices Hyman and Wright each vocalized their concerns over trial courts failing to give a statement of reasons. *Bryant*, 2016 IL App (1st) 140421 at ¶ 30; *Jackson*, 375 Ill. App. 3d at 807. Hyman cited to a myriad of cases to represent the reality of sentencing: Appellate courts uphold sentencing courts who offer no statement of reasons. *Bryant*, 2016 IL App (1st) 140421 at ¶ 30 (citations omitted).

9. *Davis*, 93 Ill. 2d at 162.

10. *Id.* at 163 (Simon, J., dissenting).

11. Nancy Gertner, *A Short History of American Sentencing: Too Little Law, Too Much Law, or Just Right*, 100 J. CRIM. L. & CRIMINOLOGY 691, 691 (2010). *See also* Morris B. Hoffman, *The Case for Jury Sentencing*, 59 DUKE L.J. 951, 963 n.43 (2003) (discussing the scholarly debate over the extent of jury sentencing in colonial America because of the lack of historical information on jury participation in sentencing).

majority and dissenting opinions. Part D will explore Illinois sentencing practices in a post-*Davis* world.

A. The History and Purpose of Sentencing in America

Sentencing in America began before the country even won independence.[12] During colonial times, the juries played a much larger role in sentencing defendants,[13] due to the colonies' "deep suspicion of judges" and the push to reduce the number of capital offenses.[14] The sentencing process was "virtually indistinguishable" from the conviction process.[15] When a jury convicted a defendant of a crime, the crime usually carried a specific sentence under the law.[16] Juries, however, could change sentences when they felt the severity of the punishment did not fit the severity of the crime.[17]

With the end of the nineteenth century came indeterminate sentencing.[18] Its supporters recognized that imposing long sentences for the sole purpose of restraining convicted criminals failed the community and the incarcerated individual.[19] Judges took a larger role in the process,[20] gaining discretion[21] but receiving very

12. Gertner, *supra* note 11, at 691.

13. *Id.* at 692.

14. Hoffman, *supra* note 11, at 963.

15. Carissa Byrne Hessick & F. Andrew Hessick, *Recognizing Constitutional Rights at Sentencing*, 99 CAL. L. REV. 47, 51 (2011).

16. *Id.*; *see also* Gertner, *supra* note 11, at 692 (stating juries often served as "de facto sentencers").

17. Gertner, *supra* note 11, at 692. *But see* Hessick & Hessick, *supra* note 15, at 51 n.12 (discussing the debate concerning the extent of discretion in colonial sentencing).

18. Gertner, *supra* note 11, at 694.

19. Charlton T. Lewis, *The Indeterminate Sentence*, 9 YALE L.J. 17, 18-19 (1899). Lewis compared determinate sentences with "cag[ing] a man-eating tiger for a month or a year" and then releasing it. *Id.* This corresponds with more modern belief of prisons as "schools" for criminals, where those who serve long sentences of incarceration learn to be better criminals from the other inmates. *Id.* Lewis advocated for indeterminate sentencing for the sake of justice for the convicted. *Id.* He also believed that indeterminate sentencing protected the community as a whole from the convicted person "discharged more the foe of mankind than before." *Id.* The only justification Lewis noted for incarceration is protecting the community from an individual who cannot live safely among them, completely discharging the theory of incarceration as a form of retribution of vengeance. *Id.*

20. Yan Zhang, Lening Zhang, & Michael S. Vaughn, *Indeterminate and Determinate Sentencing Models: A State-Specific Analysis of Their Effect on Recidivism*, 60 CRIME & DELINQ. 693, 694 (2014); Gertner, *supra* note 11, at 694-95 (discussing the new role of judges as a power player in sentencing as juries began "deferring to the professional judge").

21. Gertner, *supra* note 11, at 694-95. Judges and parole boards had wide discretion when sentencing a person convicted of a crime. *Id.* at 696. For instance, a judge could sentence an offender to incarceration for an indeterminate length of time, such as five to ten years. *Id.* at 695. Then, the parole board determined the appropriate release time for offenders, focusing on

little training.[22] Judges became more like clinicians and focused on rehabilitation through therapeutic means.[23] Indeterminate sentencing severed the conviction and sentencing stages,[24] and different rules of evidence applied to each.[25] As judges operated in a more clinical role, the rules of evidence did not apply at the sentencing stage and the standard of proof dropped to "a fair preponderance of the evidence."[26]

Indeterminate sentencing continued in the United States until the 1970s when it came under attack as ineffective at reducing recidivism.[27] The 1980s brought appellate review of sentencing, which was largely nonexistent in the federal and most state systems until that point.[28] Because of this, trial judges rarely wrote sentencing opinions.[29] Even today, Illinois appellate courts largely defer to a sentencing court's decisions on review.[30] Appellate courts will, however, alter the trial court's judgment when it is clear the trial court abused its discretion.[31]

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the safety of the community and the rehabilitation of the offender. *Id.* at 696.

22. Gertner, *supra* note 11, at 697.

23. Gertner, *supra* note 11, at 695.

24. Michele Pifferi, *Individualization of Punishment and the Rule of Law: Reshaping Legality in the United States and Europe Between the 19th and 20th Centuries*, 52 AMJLH 325, 327 (2012). *See* also Gertner, *supra* note 11, at 695 (noting that different standards of proof applied to the trial stage and sentencing stage).

25. Gertner, *supra* note 11, at 695.

26. Gertner, *supra* note 11, at 695 (discussing the rationale that judges, much like doctors making a diagnosis, should have access to any and all information necessary to cure the "moral disease" of criminal behavior).

27. Zhang, Zhang, & Vaughn, *supra* note 20, at 695-96. In the 1970s through current times, critics of indeterminate sentencing and other rehabilitative measures assert that correctional treatment has no effect on recidivism rates. *Id.* These critics largely base their assertions on a 1974 article which claimed that "nothing work[ed]" with offenders. *Id.* (citing Douglas S. Lipton, Robert Martinson, & Judith Wilks, THE EFFECTIVENESS OF CORRECTIONAL TREATMENT: A SURVEY OF TREATMENT EVALUATION STUDIES (Praeger, 1975)). As more studies claimed treatment failed, politicians and lawmakers adopted the mindset of "tough on crime." *Id.* Spurred by the public, policymakers moved away from rehabilitation towards incapacitation, deterrence, and retribution. *Id.* Since the 1974 study that initiated the shift away from rehabilitation, additional studies have come out from the criminal justice community suggesting that the 1974 study was "overblown" and too broad. *Id.* The original study labeled everything from incarceration to probation, therapy to leisure time, as "treatment." *Id.* When studies focused more narrowly on specific rehabilitative measures, the studies concluded that rehabilitation has at least modestly reduce recidivism. *Id.*

28. Gertner, *supra* note 11, at 696.

29. Gertner, *supra* note 11, at 697.

30. People v. Stacey, 193 Ill. 2d 203, 209 (2000) (stating that appellate courts afford trial courts great deference when exercising their discretionary powers over sentencing).

31. People v. Anderson, 112 Ill. 2d 39, 46 (1986) (stating a trial court abuses its discretion when the imposed sentence is "manifestly unjust or palpably erroneous" or the sentence clearly departs from fundamental law, or the

The start of appellate review corresponds with the adoption of the Federal Sentencing Guidelines in 1987.[32] Some state legislatures began enacting sentencing guidelines even before 1987.[33] For instance, Minnesota enacted its guidelines in 1980.[34] Congress and state legislatures sought to regulate sentencing disparities[35] and address the criticisms of indeterminate sentencing.[36] Congress created ranges from which a judge could sentence for particular crimes. [37] Judges use the seriousness or severity of the offense and an offender's criminal history to determine a sentence in that range.[38] In Illinois, the appellate court presumes a sentence within the statutory range is proper unless the defendant affirmatively shows that it (1) "departs from the intent of the law" or (2) violates the constitution.[39]

While some states have mandatory sentencing guidelines, the United States Supreme Court and other states have held that sentencing guidelines are merely advisory.[40] In *United States v. Booker*,[41] the United States Supreme Court held the Federal Sentencing Guidelines violated the Sixth Amendment and stated that when the court increases a defendant's sentence, the facts "must be found by a jury beyond a reasonable doubt."[42] The Court, and state supreme courts, interpreted sentencing guidelines as advisory to avoid constitutional concerns, including separation of powers concerns in some state courts.[43] Instead, the *Booker* court and state courts encouraged sentencing judges to weigh sentencing factors and consider the purposes of statutory guidelines when

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sentence is disproportionate to the nature and seriousness of the offense.)

32. Gertner, *supra* note 11, at 696.

33. Gertner, *supra* note 11, at 698.

34. Kelly Lyn Mitchell, *State Sentencing Guidelines: A Garden Full of Variety*, 81 FED. PROBATION 28, 28 (2017).

35. Lydia Brashear Tiede, *The Impact of Federal Sentencing Guidelines and Reform: A Comparative Analysis*, 30 JUST. SYS. J. 34, 35 (2009). Most criminal justice scholars acknowledged the existence of sentencing disparity under indeterminate sentencing. *Id.* Some, however, shift the focus for disparities off judicial discretion in sentencing to prosecutorial discretion in charging, pleading practices, the availability of defense attorneys, caseloads, gender, race, and ethnicity, or region. *Id.*

36. Mitchell, *supra* note 34, at 28.

37. *Id.* at 29.

38. *Id.* at 29.

39. People v. Hamilton, 361 Ill. App. 3d 836, 846 (1st Dist. 2005).

40. Mitchell, *supra* note 34, at 28.

41. United States v. Booker, 543 U.S. 220 (2005).

42. *Id.* at 231 (internal citations omitted)*; see also* Gertner, *supra* note 11, at 705 ("What was becoming more and more clear was that the judge was now nothing more than another fact finder, rather than a sentencing expert exercising any sentencing judgment, adding any kind of expertise. His or her job was to find facts with determinate numerical consequences under the Guidelines, a job which began to look more and more like the jury's.").

43. Mitchell, *supra* note 34, at 34-36.

imposing sentences.[44] The federal factors, found in 18 U.S.C. § 3553(a), include the characteristics of the defendant, the nature of the crime, the need for the sentence imposed, and the types of sentences available.[45]

B. Modern Sentencing Objectives

As sentencing in America has changed and evolved, so have the objectives of sentencing. Most legal professionals and scholars prefer to use a combination of objectives when sentencing.[46] Scholars and policymakers look at several different objectives when discussing sentencing, including retribution, rehabilitation, incapacitation, restitution, deterrence, and restoration.[47]

Some advocates have begun pushing for a move back to rehabilitation and away from retribution.[48] Rehabilitation focuses on individualized punishment[49] and seeks to improve the functioning of the offender.[50] It encourages prosocial behaviors in offenders and emphasizes motivation, guidance, and support of constructive change.[51] Rehabilitation can include personal therapy, educational and vocational training, addiction treatment, parenting training, and any other programs or services that improve the functioning of the offender and allow for an easier transition back into society.[52] A meta-analysis of hundreds of studies found that

44. *Booker*, 543 U.S. at 250. *See also* Gertner, *supra* note 11, at 705 (stating that the *Booker* Court instructed sentencing judges to weigh different factors, which included the nature of the offense and the history of the defendant).

45. 18 U.S.C. § 3553(a) (2012).

46. Robert S. Hunter, Mark A. Schuering, & Joshua L. Jones, *§ 1:1 Objectives of Criminal Sentencing*, ILTRHBCRSN § 1:1 (2019).

47. TERANCE D. MIETHE, PUNISHMENT: A COMPARATIVE HISTORICAL PERSPECTIVE 4 (2003). Retribution focuses on punishing individuals who violate social norms and is the main justification for punishment in modern sentencing. *Id.* at 16-17. Rehabilitation is concerned with healing individuals and returning them to society as law-abiding citizens. *Id.* at 22-23. Incapacitation proposes keeping society safe by locking criminals away where they cannot harm society again. *Id.* at 17-20. Restitution focuses on wrongdoers paying monetarily for the damage they caused. *Id.* at 25. Deterrence gets split into two categories. *Id.* at 20. Specific deterrence justifies punishing the wrongdoer so that he or she is less likely to break the law in the future. *Id.* General deterrence justifies punishing the wrongdoer to serve as a lesson to the rest of society and prevent others from breaking the law. *Id.* at 21. Restoration, a more recent goal of punishment, emphasizes accountability, recovery, and minimization of recidivism. *Id*. at 23-24.

48. Hunter, Schuering, & Jones, *supra* note 46.

49. Gertner, *supra* note 11, at 691.

50. Michael R. Brubacher, *Third-Party Support for Retribution, Rehabilitation, and Giving an Offender a Clean Slate*, 24 PSYPPL 503, 504 (2018).

51. Mark W. Lipsey & Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews*, 3 ANNU. REV. LAW SOC. SCI. 297, 302 (2007).

52. *See id.* at 301, 307 (listing several types of rehabilitation treatments).

offenders who receive rehabilitation treatment showed lower levels of recidivism than offenders who received no rehabilitation treatment.[53]

An additional sentencing objective also exists: giving offenders who have completed their sentences a clean slate.[54] This objective looks at the shame and stigma associated with being convicted of a crime and sentenced to incarceration, suggesting shame, in particular, can force an offender to contemplate where they fell short of societal and moral standards.[55] The "clean slate" objective differs from other objectives that also focus on shame because its supporters recognize that if shame continues after the offender completes his or her sentence, it can cause them to withdraw from society.[56]

C. Sentencing in Illinois: People v. Davis

The Illinois sentencing scheme has also changed and evolved over time. The legislature enacted 730 ILCS 5/5-4.5-50(c) ("the Statute"), which reads:

> REASONS FOR SENTENCE STATED. The sentencing judge in each felony conviction **shall** set forth his or her reasons for imposing the particular sentence entered in the case, as provided in Section 5-4-1 (730 ILCS 5/5-4-1). Those reasons may include any mitigating or aggravating factors specified in this Code, or the lack of any such factors, as well as any other mitigating or aggravating factors that the judge sets forth on the record that are consistent with the purposes and principles of sentencing set out in this Code.[57]

The Court had the chance to interpret the Statute in 1982 with the case *People v. Davis*.[58] At the sentencing hearing, the lower

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53. *Id.* at 314. The same meta-analysis also compared offenders who received greater versus lesser or no sanctions. *Id.* Offenders who received greater sanctions showed only modestly reduced recidivism rates in some studies. *Id.* In other studies, however, offenders who received greater sanctions showed an increase in recidivism rates. *Id.*

54. Brubacher, *supra* note 50, at 504.

55. *Id.*

56. *Id.* Clean slate can be coupled with retribution to achieve reintegrative shaming. *Id.* Reintegrative shaming conveys society's disapproval of the criminal action and punishes the offender. *Id.* After the process is complete, the offender is theoretically "accepted and restored as an equal member of the community." *Id.* Reintegrative shaming has been included in Restorative Justice movements and has "limited evidence" supporting its effectiveness at reducing recidivism rates. *Id.*

57. 730 ILL. COMP. STAT. 5/5-4.5-50(c) (2021) (emphasis added).

58. *Davis*, 93 Ill. 2d at 158. This case consisted of two consolidated cases: *People v. Davis* and *People v. Alvardo*. *Id.* at 157. Davis was convicted of rape and robbery and sentenced to twenty-eight years and seven years' incarceration

courts failed to state any reason for the sentence they pronounced in both consolidated cases.[59] The defendants appealed, arguing that the sentencing courts violated the Statute by not stating their reasons for imposing the sentences.[60]

1. The Majority

The majority in *Davis* affirmed the sentences and held that the Statute did not impose a mandatory duty on sentencing courts to explain its reasons for imposing sentences.[61] The majority stated that, if the court were to hold that the term "shall" places a mandatory requirement on sentencing courts, it would impermissibly allow the legislature to interfere with Judicial powers.[62] This is comparable to the section of the Statute that states "the court *shall* order a presentence investigation and report."[63] The Court in *People v. Youngbey*[64] previously upheld the section of the Statute that requires a presentence report (PSI) and held that it placed a mandatory requirement on courts.[65] The *Davis* court contrasted the two sections in its analysis regarding the permissive "shall" in the Statute at issue.[66]

The *Davis* majority first focused on the beneficiary of the protection of a mandatory PSI report and found that a PSI report

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respectively. *Id.* at 158. Alvardo was convicted of voluntary manslaughter and sentenced to seven years' incarceration. *Id.*

59. *Id.* (noting that neither trial court for either defendant gave a statement of reasons for the sentence each pronounced).

60. *Id.*

61. *Id.* at 162 (holding that the "shall" in the Statute is directory, not mandatory).

62. *Id.* at 161 (stating that sentencing powers resided solely with the judicial branch and the section of the Statute would be unconstitutional if held to be mandatory, not directory).

63. 730 ILL. COMP. STAT. 5/5-2-6 (2021) (emphasis added).

64. People v. Youngbey, 82 Ill. 2d 556 (1980).

65. *Id.* at 558-61. The trial court convicted the defendants of unlawful use of weapons in a bench trial. *Id.* The court allowed evidence regarding the defendants' prior convictions. *Id.* The defendants and the State waived the presentence investigation and requested an immediate sentencing hearing. *Id.* The State presented aggravating evidence regarding the defendants' criminal history. *Id.* The defendants presented mitigating evidence. *Id.* The defendants were sentenced to terms of imprisonment and subsequently filed notices of appeal. *Id.* In response, the judge, *sua sponte*, held the Illinois statute mandating a PSI violated separation of powers by encroaching on the judicial function of sentencing. *Id.* The trial court also found that the legislature's prohibition on waiver of a PSI violated separation of powers by encroaching on the executive branch's functions. *Id.* On appeal, the defendants and State agreed that the statute did not violate the constitution by interfering the functions of other branches. *Id.* The State, however, argued that statute did not bar a defendant's right to waive a PSI. *Id.* The Illinois Supreme Court held that the PSI and report are mandatory requirements that "cannot be waived except in accordance with the exceptions in the statute." *Id.*

66. *Davis*, 93 Ill. 2d at 159-163.

"serve[d] as a useful tool for the sentencing judge," where a statement of reasons only benefited the defendant.[67] Next, the court considered the structure of the PSI Statute, finding it persuasive that the legislature coupled the term "shall" with the negative limitation "not."[68] This required a sentencing court to adhere to the statute before sentencing a defendant, or prohibited sentencing unless the sentencing court complied with the statute.[69] With the Statute at issue in *Davis*, the legislature attempted to impose a mandatory duty on the sentencing courts.[70] This difference matters because, at least according to the *Davis* majority, a requirement relating to only *presentencing*, even if sentencing is contingent on fulfilling the requirement, does not interfere with a judge's ability to sentence. A sentencing requirement relating to the actual sentencing hearing *does* interfere with a judge's ability to sentence, according to the majority, at least.

The Court then turned to the Illinois Constitution.[71] The Constitution states: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."[72] The judicial branch has the exclusive power to impose sentences.[73] The *Davis* court concluded that the statute mandating PSI reports only related to presentencing procedure, while the Statute at issue "attempt[ed] to dictate the [substance of the] judge's pronouncement of sentence," which violates the separation of powers clause in the state constitution.[74]

Courts have a duty to construe legislation to avoid finding it unconstitutional.[75] In order to avoid invalidating the entire section of the Statute, the *Davis* court instead held that the "shall" simply granted a sentencing court permission to explain its reason for imposing a sentence.[76] The court felt this left the discretionary power of sentencing solely in the hands of the judiciary.[77]

2. Justice Simon's Dissent

Justice Simon, the sole dissenter, addressed the separation of powers issues and voiced concern over the injustice of the majority's

67. *Id.* at 160, 163 (citations omitted). By concluding that a statement of reasons only benefits the defendant, the court converted the statement into a waivable right, unlike the PSI report. *Id.*

68. *Id.* at 160.

69. *Id.*

70. *Id.*

71. *Id.* at 161.

72. Ill. Const. art. VI, § 1.

73. People v. Hammond, 2011 IL 110044, ¶ 60; People v. Phillips, 66 Ill. 2d 412, 415 (1977); People v. Montana, 380 Ill. 595, 608 (1942).

74. *Davis*, 93 Ill. 2d at 160-161.

75. *Id.* at 161.

76. *Id.* at 162.

77. *Id.*

holding.[78]

Justice Simon noted that the framers of the State Constitution did not intend for the separation of powers doctrine to create three "rigid compartments of government."[79] Furthermore, the framers of the United States Constitution intended the same result for the separation of powers clause in the Constitution.[80] Instead, the separation of powers doctrine prevents one branch of the government from controlling the others.[81] Therefore, not every blending of governmental powers constitutes a separation of powers violation.

Additionally, Justice Simon noted that the legislature can pass laws governing judicial practices as long as those laws "do not unduly infringe upon the inherent powers of the judiciary."[82] He then criticized the majority, suggesting post hoc reasoning in their conclusion that the Statute violated the constitution.[83]

Justice Simon's dissent continued by questioning the majority's logic in differentiating between this Statute and the PSI statute in Youngbey.[84] He asserted that this Statute has no effect on the substance of the sentence, nor does it affect the trial judge's ability to pronounce the sentence he or she believes is appropriate.[85] The Statute only requires judges to explain their reasoning after they have already contemplated and determined a sentence.[86] Justice Simon remarked that this requirement only impacts the content of the sentence if judges have no reasoning behind their sentences in the first place.[87]

Justice Simon proceeded in his dissent, pointing out times when the Court upheld even more intrusive statutes.88 The Court

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78. *Id.* at 164-168 (Simon, J., dissenting).

79. *Davis*, 93 Ill. 2d at 164-65 (citing Strukoff v. Strukoff, 76 Ill. 2d 53, 58-58 (1979); Burger v. Lutheran General Hosp., 198 Ill. 2d 21, 33 (2001); People v. Farr, 63 Ill. 2d 209, 213 (1976)).

80. *Davis*, 93 Ill. 2d at 165 (Simon, J., dissenting). James Madison's wrote of his concerns to avoid concentration of power in one branch of the government and preventing branches from asserting control over another branch. *Id.* He did not intend to create "rigidly separate" branches of government and acknowledged that "some blending of power is inevitable." *Id.*

81. *Id.*

82. *Id.* (citing *Youngbey*, 82 Ill. 2d at 560).

83. *Id.* at 165-66. Justice Simon criticized the majority, stating:

> Little more than lip service is given to [*Youngbey's* precedent] . . . reading the majority opinion, one gets the feeling that the conclusion that a mandatory reading of the statute would be unconstitutional has been reached before this standard is mentioned. No enlightenment as to why this infringement on judicial power is undue is offered.

Id.

84. *Id.* at 166.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 166-67.

previously upheld a similar statute89 requiring the trial court to state on the record its reasons for committing a juvenile to the Department of Corrections.90 Additionally, the Court in Youngbey upheld a statute requiring PSI and PSI reports, which Justice Simon argued forced judges to consider factors they otherwise might not consider.91 Lastly, he discussed statutes creating sentencing ranges and mandatory minimum sentences, which courts have upheld and followed.92 Justice Simon stated these statutes "strike at the very heart of the sentencing function that the majority claims is 'exclusively' judicial." [93]

After attacking the majority's logic, Justice Simon addressed his fears for the future of sentencing.[94] He voiced concerns that sentencing will appear to be "arbitrary and capricious" without a statement of reasons, which could cause public distrust in the judiciary.[95] He stated this will deny defendants any right to an explanation for their punishment, circling back to the statement at the beginning of his dissent— "[T]he absence, or refusal, of reasons is a hallmark of injustice." [96]

D. The Aftermath of Davis – Sentencing in Illinois after 1982

The Court decided Davis nearly three decades ago, and appellate justices have since voiced concern about its implications on sentencing in Illinois.[97] They encourage trial courts to more thoroughly explain their reasoning and go above-and-beyond what

89.*Id.* at 166 (discussing Juvenile Court Act, 37 Ill. Rev. Stat. 705-1(5) (1981), par. 705-1(5) (repealed 1987)). This section previously stated: "[w]hen commitment to the Department of Corrections is ordered, the court shall state the basis for selecting the particular disposition, and the court shall prepare such a statement for the inclusion in the record." *Id.* The legislature updated the Juvenile Court Act in 1987. 705 Ill. Comp. Stat. 405/4-750 (1987). No exact match for the section cited in this case exists today, although 705 ILCS 405/5-750 provides a close analogue. 405/5-750 does not require the court to state for the record why it decided to commit the juvenile, it does require the court to make specific findings about why less extreme means failed. *Id.*

90. In re Griffin, 92 Ill. 2d 48 (1982).

91. *Davis*, 93 Ill.2d at 167 (Simon, J., dissenting).

92. *Id.*

93. *Id.*

94. *Id.* at 168.

95. *Id.* (criticizing "a judiciary that is too busy fighting battles with the legislature over an imaginary encroachment on its independence to understand its relationship with the legislature and the people").

96. *Id.* at 163.

97. People v. Davis, 2019 IL App (1st) 160408, ¶¶ 82-83; *Bryant*, 2016 IL App (1st) 140421 (Hyman, J., concurring); People v. Jackson, 375 Ill. App. 3d 796, 807 (2007) (Wright, J., concurring in part and dissenting in part); *Jackson*, 375 Ill. App. 3d at 804-05 (McDade, J., concurring); People v. Jackson, No.1-15-2720, 2017 WL 4127475 (Ill. App. Ct. Sept. 15, 2017) (Gordon, J., dissenting).

the law requires to ensure justice and aid appellate review.[98]

Justice Wright, dissenting from the majority's affirmation of the sentence in People v. Jackson,[99] discussed the implications of Davis.[100] After Davis, she stated, "trial courts seem to have substituted the flexibility of the permissive 'shall' with a practice of creating records that 'need not' demonstrate careful reflection prior to sentencing."[101] She then noted that appellate courts affirm sentences within statutory ranges, even when sentencing judges give little-to-no explanation.[102]

Justice Wright[103] insisted that sentencing courts not treat sentencing as "an afterthought."[104] Justice Wright advocates for requiring lower courts to explain their reasons for sentencing on the record because of the constitutional requirement to balance retribution and rehabilitation when sentencing.[105] She states that the Davis Court in 1982 did not intend for trial courts to completely omit a statement of reasons.[106] To conclude her argument, she states, "It is reasonable to expect the trial judge to take a few moments for a young offender, who stands before the court to learn the nature of his punishment and the measure of his rehabilitative potential."[107]

In a concurrence to that same case, Justice McDade[108] also

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98. *Davis*, 2019 IL App (1st) 160408, at ¶ 82.

99. *Jackson*, 375 Ill. App. 3d at 798-801. A jury found the defendant guilty of unlawful possession of cocaine with intent to deliver and unlawful delivery of cocaine. *Id.* At the sentencing hearing, the court heard evidence in aggravation from the State's witness and read a letter in mitigation written by the defendant. *Id.* The State presented evidence regarding lengthy prior criminal history and made recommendations about sentencing alternatives. *Id.* The defendant asked the judge to consider the defendant's age, the police officers' role in the criminal action, stating the police initiated the criminal conduct, and other mitigating evidence from the PSI. *Id.* The trial court then said it considered the evidence presented at trial, the PSI report, the defendant's character and criminal activity, and the hardship on his family. *Id.* The court sentenced the defendant to three concurrent sentences. *Id.*

100. *Id.* at 807-08 (Wright, J., concurring in part and dissenting in part). Justice Wright disagrees with how the majority paints the trial court's consideration of the factors. *Id.* She directly cites the pronouncement from the record, pointing out the brevity of the sentencing hearing in which the court sentenced the defendant to one year less than the maximum sentence. *Id.* She notes that the court did not state which factors, if any, it considered. *Id.*

101. *Id.*

102. *Id.*

103. Appellate Judge Vicki Wright Biography, ILLINOIS COURTS, illinoiscourts.gov/AppellateCourt/Judges/Bio_Wright.asp [perma.cc/S9K6-6N5P] (last visited Oct. 12, 2020). Justice Wright sits on the Illinois Appellate Court for the Third District. *Id.*

104. *Jackson*, 375 Ill. App. 3d at 809 (Wright, J., concurring in part and dissenting in part).

105. *Id.*

106. *Id.*

107. *Id.*

108. Appellate Judge Mary McDade's Biography, ILLINOIS COURTS,

notes that sentencing has turned into an afterthought.[109] She states that absent a statement of reasons, the appellate court cannot properly review a sentence.[110] Justice McDade asserts that the legislature intended to remedy that exact issue when enacting the Statute, attempting to facilitate easier and more appropriate appellate review.[111] In agreement with Justice Wright, Justice McDade states that she believes a statement of reasons should be required.[112]

Appellate justices have also voiced concern over the injustice done to defendants when sentencing courts do not offer any explanation.[113] Justices today believe that Justice Simon's concerns about injustice have come true.[114] In multiple opinions, Justice Hyman vocalized his opinion on the problem he sees with the current sentencing procedure.[115] He emphasized the importance of defendants and the public trusting that the judiciary operates fairly and unbiasedly.[116] Without a statement of reasons, he noted, this trust cannot exist.[117] Justice Hyman encouraged the Illinois Supreme Court to reconsider its decision in Davis, cementing the idea that separation of powers concerns might not be at issue.[118] He addressed the majority in Davis directly, concluding that a statement of reasons not only benefits defendants, but also the State, the public, and the appellate court.[119] On multiple occasions,[120] he encouraged sentencing courts to go beyond the law and preserve the "integrity of the criminal justice system."[121]

The Illinois Supreme Court, however, does not have to continue to follow precedent for precedent's sake. Courts can, and have in the past, reversed themselves when they have seen fit.[122]

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illinoiscourts.gov/AppellateCourt/Judges/Bio_McDade.asp [perma.cc/6HK9-8433] (last visited Oct. 12, 2020). Justice McDade sits on the Illinois Appellate Court for the Third District. *Id.*

109. *Jackson*, 375 Ill. App. 3d at 804-05 (McDade, J., concurring).

110. *Id.*

111. *Id.*

112. *Id.*

113. *See Bryant*, 2016 IL App (1st) 140421 at ¶¶ 26-30. (Hyman, J., concurring) (stating *Davis* bound him to affirm the defendant's 21-year sentence for weapons charges but criticizing sentencing courts who failed to explain their sentencing decisions).

114. *Id.* at ¶ 31.

115. *Id.* at ¶¶ 26- 30; *see also Davis*, 2019 IL App (1st) 160408 at ¶ 84 (urging trial courts to provide more than a "bare bones recitation" of sentencing factors).

116. *Bryant*, 2016 IL App (1st) 140421 at ¶ 33 (Hyman, J., specially concurring).

117. *Id.*

118. *Id.* at ¶ 35.

119. *Id.*

120. *Id.*; *Davis*, 2019 IL App (1st) 160408 at ¶ 82.

121. *Bryant*, 2016 IL App (1st) 140421 at ¶ 35.

122. Ilya Shapiro & Nicholas Mosvick, *Stare Decisis After Citizens United: When Should Courts Overturn Precedent*, 16 NEX. J. OP. 121, 125 (2010-2011).

III. ANALYSIS

Illinois' requirement for a statement of reasons differs from the federal requirement, as well as several other state requirements. A statement of reasons serves many important goals, such as increasing judicial transparency, ensuring justice, and aiding appellate review. Furthermore, when a court fails to provide a statement of reasons, the court fails to implement accepted sentencing objectives. Lastly, a mandatory duty to provide a statement of reasons does not create a separation of powers issue.

A. Sentencing in Other Jurisdictions

1. Statement of Reasons in the Federal Courts

Although federal sentencing law is not binding Illinois state courts,[123] states sometimes look to the federal system as persuasive authority when making determinations about state law.[124] Federal law differs from Illinois law regarding providing a statement of reasons and better effectuates the purposes of sentencing.

18 U.S.C. § 3553(c) controls federal sentencing law and states: "Statement of reasons for imposing a sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence."[125] After *Booker*, a series of cases, beginning with *Rita v. United States*[126] chipped away at the Sentencing Guidelines.[127] These cases, however, did not alter the

123. *Cf.* McGrath v. CCC Information Services, Inc., 312 Ill. App. 3d 431, 438 (2000) (stating decisions of the federal courts construing State statues are not binding on state courts).

124. People v. Thompson, 2016 IL 118667, ¶ 40-41 (stating that "[the court] may look to federal law, as well as state decisions interpreting similar rules for guidance"). The Illinois statute interpreted by *Davis* is remarkably similar to its federal counterpart. *Compare* 730 ILL. COMP. STAT. 5/5-4.5-50(c) (2021) ("The sentencing judge in each felony conviction shall set forth his or her reasons for imposing the particular sentence entered in the case."), *with* 18 U.S.C. § 3553(c) (2012) ("The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence").

125. 18 U.S.C. § 3553(c) (2012).

126. Rita v. U.S., 551 U.S. 338 (2007).

127. *Id*. at 381-82. In *Rita*, the petitioner bought kits online to build firearms. *Id.* at 341. One of these kits, a "PPSH 41 machinegun 'parts kit,'" could be used to assemble machineguns. *Id.* Prosecutors insisted these kits "amounted to machineguns" and InterOrdance, the gun company who sold the kits, had failed to obtain proper registrations. *Id.* The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) sought to inspect Rita's machine gun parts kit, and Petitioner agreed. *Id.* Before the meeting, however, Petitioner sent his kit back to InterOrdance and gave the ATF agent a different kit. *Id.* at 341-42. In front of a grand jury, Petitioner denied that the ATF asked for his machine gun parts kit and that he had spoken to InterOrdance about the kit. *Id.* at 342. The prosecutors, claiming Petitioner had made false statements, "charged [Petitioner] with perjury, making false statements, and obstructing

procedural components of the guidelines, including § 3553(c).[128] The Court in *Rita* acknowledged that the statement of reasons requirement "reflects sound judicial practice."[129] In fact, a district court's failure to give a statement of reasons is a reversible error.[130] A sentencing judge needs to fully explain his or her reasoning if he or she rejects an argument to deviate from the Guidelines.[131] When a circuit court of appeals finds a district court's statement of reasons inadequate, it can remand the case for a fuller explanation.[132]

The *Rita* Court explained that when a sentencing judge rejects arguments from either party to deviate from the Guidelines, the Court will require a more in-depth reasoning for the rejection.[133] Even a sentence from within the Guidelines requires an explanation[134]—unlike in Illinois, where a sentence within the guidelines evades almost all scrutiny.[135]

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justice." *Id.* A jury convicted Petitioner, and the district court sentenced him to 33 months in prison based on the Guidelines. *Id.* at 342-45. On appeal to the Supreme Court of the United States, Petitioner argued that the district court failed to adequately state its reasoning as required by § 3553(c). *Id.* at 356. The Court held that, although brief, the explanation provided by the trial court sufficed. *Id.* The trial judge discussed and rejected the reasons the defendant wanted a downward variance, made clear it heard the government's concerns about public safety, and mentioned the sentencing factors. *Id.* at 344-46.

128. *Id.*

129. *Id.* at 356.

130. Chavez-Mesa v. U.S., 138 S. Ct. 1959, 1965 (2018). The district court sentenced Chavez-Mesa to 135 months' imprisonment for a drug offense. *Id.* at 1963. Under the Guideline range in affect at the time, he could have been sentenced from 135 to 168 months. *Id.* at 1964. Chavez-Mesa asked for a variance from the statutory range given his history and family circumstances. *Id.* at 1966. The district court judge explained his reasoning, explaining that he had consulted the Guidelines and considered the amount of methamphetamine Chavez-Mesa had in his possession, as well as the danger of methamphetamine to society. *Id.* at 1966-67. When the Sentencing Commission lowered the sentencing range to 108 to 135 months, Chavez-Mesa sought a reduction in his sentence. *Id.* at 1963, 1965. The district court judge, who had originally sentenced Chavez-Mesa, subsequently lowered his sentence to 114 months. *Id.* at 1963. The judge, after hearing arguments from Chavez-Mesa and the government, said that he considered the motion, the Guidelines policy statement, and the statutory factors. *Id.* at 1967. Chavez-Mesa appealed, arguing the district court failed to adequately explain its reasons for sentencing him higher than the statutory minimum. *Id.* at 1965. The Court of Appeals affirmed his sentence and held the district judge's statement of reasons was adequate. *Id.* at 1963. Chavez-Mesa appealed to the Supreme Court of the United States, which affirmed the holding of the Court of Appeals. *Id.*

131. *Rita*, 551 U.S. at 357.

132. *Chavez-Mesa*, 138 S. Ct at 1965-66 (*citing* Molina-Martinez v. United States, 136 S. Ct. 1338 (2016)).

133. *See Rita*, 551 U.S. at 357 (stating when judges reject a defendant or prosecutor's arguments to deviate from Guidelines, they will "normally go further and explain why [they have] rejected those arguments"). When sentencing from the Guidelines, however, a more succinct statement of reasons will suffice. *Id.* at 356.

134. *Id.* at 356.

135. *Bryant*, 2016 IL App (1st) 140421 at ¶ 30 (Hyman, J., specially

The Supreme Court has explained the importance of this requirement.[136] Deferring to Congress, the Court has noted Congress' intent to end excessive sentencing disparity and encourage sentence uniformity.[137] Ending sentence disparity serves to increase justice for the defendants in a case. Additionally, the Court stated that when district courts explain their reasoning, it allows the Sentencing Commission to review and amend the Guidelines when necessary.[138] Lastly, the Court noted the importance of public trust and judicial transparency.[139] When the public views a judgment as based on sound reason, it fosters public trust in the judiciary.[140]

Although *Rita* and the cases that followed took some of the force out of the statute by continuously decreasing the depth of explanation needed to meet the standard under the statute,[141] it still stands, and some justices have argued to expand the requirement again.[142] In *Chavez-Mesa v. U.S.*,[143] the Court examined an appeal from a sentence modification, which it treated differently than an initial sentencing proceeding.[144] After the majority found that the explanation given by the trial court during the initial proceeding sufficed, Justice Kennedy wrote a dissent to voice his concerns regarding the sentencing procedure in the federal courts.[145] He argued that the Court's holding, which still requires sentencing courts to give more explanation than Illinois under *Davis*, went too far when it permitted the "terse, largely uninformative" conclusory order to suffice.[146] Justice Kennedy, joined by Justices Sotomayor and Kagan, recognized the importance of such a requirement and argued against any narrowing of it.[147] Even the majority, however, never contemplated abolishing the requirement and following a law similar to Illinois.[148]

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concurring).

136. *Rita*, 551 U.S. at 356, 382.

137. *Id.* at 382.

138. *Id.*

139. *Id.* at 356.

140. *Id.*

141. Michael M. O'Hear, *Appellate Review of Sentence Explanations: Learning from the Wisconsin and Federal Experiences,* 93 MARQ. L. REV. 751, 781 (2009).

142. *Chavez-Mesa*, 138 S. Ct. at 1968 (Kennedy, J., dissenting). Justices Sotomayor and Kagan joined Justice Kennedy's dissent. *Id.*

143. *Id.* at 1959.

144. *Id.* at 1965.

145. *Id.* at 1965, 1968. The Court noted the statute governing modifications does not require judges to give a statement of reasoning on the record. *Id.* at 1965 (comparing § 3553(c) with § 3582(c)(2)). Then, for argument's sake, the Court discussed the district court's statement of reasons. *Id.* It held that even if the statute required the district court to provide a statement of reasons, it did so sufficiently. *Id.*

146. *Id.* at 1970.

147. *Id.*

148. *See id.* at 1966 (affirming that trial judges must adequately explain

The Supreme Court, and some circuit courts, have also interpreted and defined the boundaries of the requirement in § 3553(c).[149] The district court judge "should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision making authority."[150] The depth of explanation depends on the case.[151] When the facts are straightforward and the judge sentences within the Guidelines, a more concise explanation might suffice.[152] In those cases, a statement that the judge relied on the record, considered all arguments, and took into account the Guideline factors will suffice for appellate review.[153] In other cases, however, reviewing courts will require more.[154] Then, appellate courts require more than a list of conditions without any reasoning.[155]

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their sentences). The majority found the explanation at the initial sentencing to be sufficient when "the judge noted that he had 'consulted the sentencing factors of 18 U.S.C. 3553(a)(1).'" *Id.* at 1966. The sentencing judge then "explained that the 'reason the guideline sentence is high in this case…is because of the [drug] quantity.'" *Id.* Additionally, the sentencing judge went on to point out "that [the] petitioner had 'distributed 1.7 kilograms of actual methamphetamine,' a 'significant quantity.'" *Id.* at 1966-67. He went even further to state "that 'one of the other reasons that the penalty is severe in this case is because of methamphetamine.'" *Id.* at 1967. Lastly, the judge explained that "he had 'been doing this a long time, and from what [he] gather[ed] and what [he had] seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities.'" *Id.* (internal citations omitted). Justice Kennedy in the dissent found that by not requiring some explanation during resentencing and imputing the reasoning from the first sentencing while the second sentencing merely ticked boxes on a form, the Court narrowed *Rita* and the requirement to give a statement of reasoning. *Id.* at 1970 (Kennedy, J., dissenting). In Illinois, however, the law requires even less than what Justice Kennedy viewed as a narrowing of the requirement at the federal level by not requiring any statement of reasons at all. *Davis*, 93 Ill.2d at 162-63. Appellate courts uphold sentences without sentencing judges even stating how they are balancing aggravating and mitigating factors. *Bryant*, 2016 IL App (1st) 140421, at ¶ 28.

149. *Id.*; *accord* United States v. Shoffner, 942 F.3d 818 (7th Cir. 2019); United States v. Cookson, 922 F.3d 1079, 1091-92 (10th Cir. 2019) (citing United States v. Lychock, 578 F.3d 214, 220) (stating that a brief or limited explanations prevents a reviewing court from assuring the substantive reasonableness of a sentence); United States v. Pugh, 945 F.3d 9, 26 (2d Cir. 2019) (stating that a more in-depth explanation will be required if the judge exercises greater discretion by going outside the guidelines or imposes a broader range within the statutory guidelines).

150. *Chavez-Mesa*, 138 S. Ct. at 1965 (citing *Rita*, 551 U.S. at 356).

151. *Id.* at 1965.

152. *Id.*; *Rita*, 551 U.S. at 356; United States v. Moose, 893 F.3d 951, 960 (7th Cir. 2018).

153. *Chavez-Mesa*, 138 S. Ct. at 1965.

154. *Id.*; *Rita*, 551 U.S. at 357. *See also Moose*, 893 F.3d 951, 960 (holding that obvious restrictions, such as requiring drug testing for a drug offender or restricting contact with children for child abusers, do not need to be as thoroughly explained as less obvious restrictions).

155. U.S. v. Kappes, 782 F.3d 828, 846 (7th Cir. 2015).

The Seventh Circuit in *United States v. Shoffner*[156] illustrated the framework for analyzing whether a statement of reasons suffices for review at the circuit court level.[157] Shoffner pleaded guilty to possession of a firearm by a felon,[158] a violation of federal law.[159] He appealed to the Seventh Circuit the first time on a matter unrelated to a statement of reasons, and the Seventh Circuit remanded and directed the sentencing court to use a lower guidelines range.[160] On remand, he argued for a downward deviance from the Guidelines proportionate to the downwards modification the first sentencing court had granted him.[161] He focused on his rehabilitation during his incarceration, noting more than twenty certificates he earned and his avoidance of criminal behavior while incarcerated.[162] He also argued that the first sentencing court had properly characterized his behavior when deviating from the Guidelines and insisted that the Guidelines would be unfair in his case.[163]

The Central District refused a deviation, stating it reviewed the sentencing memorandum, the PSI report, and other submissions.[164] The judge then praised Shoffner for his good behavior and efforts in prison programs before stating, "that an 84-month sentence is still the appropriate sentence."[165] When Shoffner asked why he did not receive a downward variance a second time, the district court "referred briefly" to the statutory factors and stated the sentence "was appropriate given Mr. Shoffner's 'history and characteristics, given the circumstances of the offense, to afford adequate deterrence, to protect the public.'"[166]

On appeal a second time to the Seventh Circuit, Shoffner

156. *Shoffner*, 942 F.3d at 818.

157. *Id.* Shoffner pleaded guilty to possession of a firearm by a felon, and the Central District of Illinois sentenced him to 84 months incarceration. *Id.* at 820-21. The Central District judge deviated downwards from the calculated Guideline sentence, and Shoffner appealed. *Id.* The Seventh Circuit had previously remanded Shoffner's case for resentencing on a different issue. *Id.* A different Central District judge recalculated according to the correct Guidelines. *Id.* at 824. When the sentencing judge did not deviate downwards, Shoffner appealed seeking "a downward departure parallel to the one granted in the first sentencing proceeding." *Id.* at 821. The Seventh Circuit's analysis focuses on this second sentencing hearing. *Id.*

158. *Id.* at 820.

159. 18 U.S.C. § 922(g)(1) (2019).

160. *Shoffner*, 942 F.3d at 821.

161. *Id.* The original sentencing court had reduced his sentence by half a sentence enhancement for striking a police officer during Shoffner's arrest. *Id.* The judge had discussed at length the circumstances surrounding the arrest, focusing on the fear and panic Shoffner might have felt. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 821-22. The district court also noted it did not review the transcript more than what Shoffner referenced in his memorandum. *Id.*

165. *Id.* at 822.

166. *Id.*

argued that the sentencing court failed to adequately explain why it refused a proportionate deviation.[167] The *Shoffner* court noted that federal law "requires 'an individualized assessment based on the facts presented.'"[168] A court must do more than "simply [acknowledge] that it…considered the [presentence report], the guidelines, the § 3553(a) factors, and both sides' arguments, and then [impose a] sentence."[169] It must offer some explanation as to how it assessed how the statutory factors apply to a particular defendant.[170] The Seventh Circuit does not always require an exhaustive analysis on the record, but more comprehensive analyses allow the court to more accurately follow the district court's reasoning.[171]

The second sentencing court in *Shoffner* failed to adequately explain its reasoning and left it unclear if it agreed with the reasoning of the earlier sentencing court.[172] The Seventh Circuit noted the reasoning of the first sentencing court did not bind the second court, so the second court needed to provide a statement of reasons, as well.[173] The Seventh Circuit required the sentencing court to explain how it applied the statutory factors and why it rejected Shoffner's arguments.[174] Applying this framework, the Seventh Circuit remanded for further explanation.[175]

Had Illinois applied this framework, *Davis* and the cases that followed would be decided differently. In the 1982 *Davis* case, the Illinois Supreme Court upheld the petitioner's sentence without any statement of reasons.[176] *Shoffner* stated that a sentencing court must do more than restate sentencing factors, and the *Davis* court failed to state any factors at all. The sentencing court also did not explain how, or if, it considered the parties' arguments. *Shoffner* explained that reviewing courts will not require an exhaustive explanation every time, but they will surely require more than nothing. Under *Shoffner*, the case would have been remanded on a procedural error with directions to offer at least some explanation for the sentence.

The *Shoffner* framework aligns more closely to the framework

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167. *Id.*

168. *Id.* at 824 (citing Gall v. United States, 522 U.S. 38, 50 (2007)) (internal citations omitted).

169. *Id.* at 822 (citing United States v. Lyons, 733 F.3d 777, 785 (7th Cir. 2013).

170. *See id.* at 823 (stating "[w]e still cannot say, however, that the court provided us with an explanation of its decision sufficient to allow meaningful review. As a threshold matter, the district court provided little explanation as to how it assessed the § 3553(a) factors in the context of Mr. Shoffner's offense").

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 823-24.

176. *Davis*, 93 Ill.2d at 158.

Justice Hyman suggested that Illinois adopt.[177] In 2016, in *Bryant*, the Illinois Appellate Court upheld a sentence where "the trial court stated that it had considered the evidence at trial, the gravity of the offense, the [PSI] report, the financial impact of incarceration, aggravating and mitigating evidence, substance abuse issues and treatment, potential for rehabilitation, possible sentencing alternatives, and reliable hearsay."[178] Justice Hyman's concurrence noted that the list was merely a recitation of the statutory sentencing factors.[179] The majority in *Bryant* upheld the sentence despite the scant reasoning.[180] The sentencing court in *Bryant* offered even less explanation than the court in *Shoffner*.[181] If we apply *Shoffner*, *Bryant* also would have been remanded for merely restating statutory sentencing factors without analyzing how the court applied the factors to Bryant. The court had sentenced Bryant within the statutory range, but *Shoffner* still requires more explanation than the sentencing court gave.

2. Statement of Reasons in Other States

Although a minority rule, a statement of reasons requirement is not uncommon in state courts.[182] Similar to the federal courts,

177. *Bryant*, 2016 IL App (1st) 140421, ¶¶ 32-35 (Hyman, J., concurring).

178. *Id.* at ¶ 27.

179. *Id.*

180. *Id.* at ¶¶ 16, 24.

181. *Compare Bryant*, 2016 IL App (1st) 140421, ¶ 27, 28 (stating: "[T]he trial court stated that it had considered the evidence at trial, the gravity of the offense, the [PSI] report, the financial impact of incarceration, aggravating and mitigating evidence, substance abuse issues and treatment, potential for rehabilitation, possible sentencing alternatives, and reliable hearsay" but never explained how it weighed these factors), *with Shoffner*, 942 F.3d at 822 (stating: "The court commented that Mr. Shoffner was 'intelligent' and 'passionate' and further expressed that Mr. Shoffner had 'taken advantage' of the prison's programs, which was a 'credit' to him . . . , however, these efforts did not 'change the fact . . . that an 84-month sentence is still the appropriate sentence'").

182. *See* Carter v. State, 192 A.3d 695, 734-36 (Md. 2018) (encouraging sentencing courts to explain their reasons to better serve justice and aid in appellate review); People v. Steanhouse, 902 N.W.2d 327, 335 (Mich. 2017) (holding a sentencing court must justify its sentence to facilitate appellate review); State v. Old Bull, 403 P.3d 670, 674 (Mont. 2017) (affirming a sentence within the statutory range where the sentencing court explained its reasoning); State v. Hill, 878 N.W.2d 269, 273-74 (Iowa 2016) (construing its statute as imposing a mandatory duty to provide a statement of reasons in order to aid appellate review and ensure defendants are aware of the consequences of their crime); Bradley v. District of Columbia, 107 A.3d 586, 599-601 (D.C. 2015) (holding that a statement of reasons is intertwined with the right to allocution, which implicates the due process clause); State v. Riley, 110 A.3d 1205, 1217 (Conn. 2015) (requiring all sentencing courts to provide a statement of reasons on the record); People v. Boyce, 330 P.3d 812, 858-59 (Cal. 2014) (requiring sentencing courts to provide a statement of reasons but barring defendants from raising an objection to a court's failure to provide a statement of reasons for the first time on appeal); State v. Bise, 380 S.W.3d 682, 706-08 (Tenn. 2012)

almost a quarter of American state courts require a sentencing court to explain, to some extent, their reasons for sentencing.[183] These courts have noted the importance of the statement of reasons for similar reasons to the federal courts, including aiding appellate review,[184] ensuring defendants understand their sentences,[185] and protecting judicial justice.[186] Unlike Illinois, these states have crafted their sentencing laws to reflect those concerns.[187]

For example, the Iowa Rules of Criminal Procedure require the sentencing court to "state on the record its reason for selecting the particular sentence."[188] The Iowa Supreme Court, in *State v. Hill*, interpreted the statute as imposing a mandatory duty on sentencing courts to include a statement of reasons.[189] Without a statement of reasons, Iowa feared defendants would remain unaware of the consequences of their actions.[190] The defendants would be punished, but would have no insight as to why the judge selected that specific punishment.[191] The Iowa court's reasoning in *Hill* contrasts with the *Davis* majority.[192] The majority in *Davis* found that the trial court does not need to offer a statement of reasons on its own because it merely benefits the defendant.[193] It offered no discussion of the importance of a defendant understanding his or her sentence. In contrast, *Hill* considered a defendant understanding his or her sentence to be of great importance and also addressed the importance of a statement of reasons for the reviewing court.[194]

(applying the Supreme Court of the United States decision in *Rita* to Tennessee state courts); State v. Harnois, 853 A.2d 1249 (RI 2004) (requiring a sentencing court to examine the record, trial findings, the character of the defendant); Ford v. State, 802 So.2d 1121, 1133-34 (Fla. 2001) (citing Campbell v. State, 571 So.2d 415 (Fla. 2001)) (stating "[t]he court next must weigh the aggravating circumstances against the mitigating and, in order to facilitate appellate review, must expressly consider in its written order each established mitigating circumstance . . . . To be sustained, the trial court's final decision in the weighing process must be supported by 'sufficient competent evidence in the record'") (internal citation omitted); *and* State v. Miller, 527 A.2d 1362, 1367-68 (NJ 1987) (requiring a statement of reasons to aid appellate review).

183. *See* cases cited *supra* note 182 (citing cases which discuss disclosure of reasons for sentencing from across the U.S.).

184. *Steanhouse*, 902 N.W.2d at 335 (stating that sentencing courts must justify the sentence to aid appellate review) (internal citations omitted).

185. *Hill*, 878 N.E.2d at 273-74.

186. McCleary v. State, 182 N.W.2d 512, 521 (1971).

187. *Id.* (judicially creating a requirement for a statement of reasons).

188. IOWA CODE ANN. § 2.23(3)(d) (West 2021).

189. *Hill*, 878 N.E.2d at 273-74.

190. *See id.* (stating, "[t]his requirement ensures defendants are well aware of the consequences of their criminal actions").

191. *Id.*

192. *Id.*

193. *Compare Davis*, 93 Ill. 2d at 162-63 (holding that a statement of reasons is a waivable personal right that the trial court need not offer on its own), *with Hill*, 878 N.E.2d at 273-74 (holding that a statement of reasons is necessary because it helps a defendant understand their punishment).

194. *Hill*, 878 N.E.2d at 273-74. The *Hill* court did, however, note that this

Similarly, the Supreme Court of Nevada cited *Davis* in its reasoning when it interpreted a sentence enhancement statute phrased like the Illinois Sentencing Statute.[195] The Nevada statute that the court[196] examined required that the sentencing court explain the factors it considered, on the record, when imposing a deadly weapon sentence enhancement.[197] The court took a position identical to the *Davis* majority and held that the statute violated the separation of powers doctrine.[198] Unlike the Illinois Supreme Court, however, Nevada's Supreme Court upheld the statute.[199] After weighing the risk of intrusion with the legislature's public policy argument, the court held the statute imposes a mandatory duty because "it serve[d] the laudable goal of ensuring that there is a considered relationship between the circumstances . . . and the length of the enhancement sentence."[200] The court then mandated the lower courts to abide by the statute.[201]

Wisconsin also requires sentencing courts to provide a statement of reasons on the record.[202] That State's statute requires that "[t]he court **shall** state the reason for its sentencing decision . . . in open court and on the record."[203] The statute like its Illinois counterpart, states a "sentencing judge **shall** state its reasons for sentencing."[204] Despite nearly identical statutory requirements, and close physical proximity, Wisconsin imposes a very different

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reason is secondary in importance to an appellate court's ability to review a sentence. *Id.* at 273. ("Second, and 'most importantly,' this requirement 'affords the appellate courts the opportunity to review the discretion of the sentencing court.'") (excluding internal citations). This suggests that, even though a statement of reasons is a personal right for a defendant, it does more than benefit the defendant—it benefits the court, as well.

195. Mendoza-Lobos v. State, 125 Nev. 634, 641-42 (2009).

196. *Id.*

197. NEV. REV. STAT. ANN. § 193.165 (West 2021) (providing "[t]he court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of additional penalty imposed").

198. *Mendoza-Lobos*, 125 Nev. at 639-41 (citing *Davis*, 93 Ill.2d at 159). Like the majority in *Davis*, the Supreme Court of Nevada concluded that legislature cannot "dictate the manner in which a sentence is pronounced." *Id.* It held that the portion of the statute placing the requirement on judges was an intrusion on the judiciary's powers to pronounce a sentence. *Id.*

199. *Id.* at 640.

200. *Id.* at 641.

201. *Id.* at 642.

202. WIS. STAT. § 973.017(10m) (2001-02) (codifying the Supreme Court of Wisconsin's decision in McCleary v. State, 182 N.W.2d 512 (1971)) (emphasis added).

203. *Id.* (emphasis added).

204. *Compare* WIS. STAT. § 973.017(10m) (2001-02) ("Statement of reasons for sentencing decision. (a) The court shall state the reasons for its sentencing decision and ... shall do so in open court and on the record") (emphasis added), *with* 720 ILL. COMP. STAT.570/401 (2021) (The sentencing judge in each felony conviction shall set forth his or her reasons for imposing the particular sentence entered in the case).

obligation on its sentencing courts.[205]

Wisconsin's requirement came about differently than the requirement in the federal system and in other states that require a statement of reasons.[206] Wisconsin's Supreme Court imposed a requirement on the sentencing court to issue a statement of reasons in *McCleary*,[207] which the legislature then codified,[208] and the Supreme Court subsequently reaffirmed.[209]

In 1971, in *McCleary v. State*, more than a decade before *Davis*, Wisconsin's Supreme Court required sentencing judges to explain their reasoning out of concern for judicial transparency and appellate review.[210] The court held that judges have an obligation to explain their reasoning "in all Anglo-American jurisprudence."[211] In *People v. Gallion*, the Supreme Court of Wisconsin reiterated the words in *McCleary*, stating that they "are as true today as they were when they first appeared." [212] The *Gallion* court then voiced concerns over sentencing courts ignoring the directive from *McCleary* and the legislature.[213]

First turning to appellate review, the court in *McCleary* discussed the wide discretion appellate courts grant sentencing courts.[214] The court stated that discretion should be based on rationality and reasoning.[215] In order to properly review a sentence for error, an appellate court needs to understand the sentencing court's rationale behind the sentence.[216] This discussion closely resembles Justice Simon's urging in *Davis* for sentencing judges to explain their reasoning to aid appellate review.[217]

Additionally, the *McCleary* court did not find that a statement

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205. *McCleary*, 182 N.W.2d at 522-23 (requiring sentencing judges to state on the record its reasons for sentencing).

206. *Id.* Wisconsin judicially created its requirement for a statement of reasons. *Id.* at 522. The *McCleary* court adopted the American Bar Association Standards Relating to Appellate Review of Sentences, which required sentencing judges to state their reasons on the record in the presence of defendants. *Id.* (citing STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES standard 2.3(c) (Am. Bar Ass'n 1968)).

207. *Id.* at 521 ("It is thus apparent that requisite to a prima facie valid sentence is a statement by the trial judge detailing his reasons for selecting the particular sentence imposed.").

208. WIS. STAT. § 973.017(10m) (2001-02).

209. State v. Gallion, 2004 WI 42, ¶ 5 (2004).

210. *McCleary*, 182 N.W.2d at 521. Iowa and Nevada also cited assisting appellate review as a reason to uphold and enforce their respective statutes. *Hill*, 878 N.E.2d at 273; *Mendoza-Lobos*, 125 Nev. at 642.

211. *McCleary*, 182 N.W.2d at 521.

212. *Gallion*, 2004 WI 42, at ¶ 2 (stating sentencing courts "merely [utter] the facts, [invoke] sentencing factors, and [pronounce] a sentence").

213. *Id.*

214. *Id.* at ¶ 18.

215. *McCleary*, 182 N.W.2d at 519.

216. *Gallion*, 2004 WI 42, at ¶ 19 (citing *McCleary*, 182 N.W.2d at 512).

217. *Davis*, 93 Ill. 2d at 167-68 (Simon, J., dissenting) (finding a statement of reasons facilitates appellate review).

of reasons is a benefit only for the defendant.[218] The Supreme Court of Wisconsin recognized the importance of a statement of reasons for the court system as a whole.[219] A statement of reasons focuses the sentencing court on the relevant factors and facilitates a more well-reasoned sentence.[220] Wisconsin's assertion corresponds with Justice McDade's concerns in Illinois about sentencing becoming an afterthought.[221] By requiring judges to discuss their reasoning in open court, the requirement ensures that sentencing does not turn into an afterthought. This also helps an appellate court review a sentence for an abuse of discretion, furthering its aid to the court system.[222]

Wisconsin, like the federal system, also considered judicial transparency when forming its statement of reasons requirement.[223] The *McCleary* Court stated, "[i]n all Anglo-American Jurisprudence a principal obligation of the judge is to explain the reasons for his actions. His decisions will not be understood by the people…unless the reasons for decisions can be examined."[224] Without a statement of reasons, the public has no means of understanding the judge's logic behind a sentence. Implied rationale erodes the law set out by the court and legislature, and the Supreme Court of Wisconsin in *McCleary* and again in *Gallion* directs sentencing courts to provide a statement of reasons.[225] The exact procedure that Wisconsin has repeatedly rejected, is more than sufficient in Illinois despite the two statutes reading almost identical.

B. The Importance of a Statement of Reasons

Like the courts in numerous jurisdictions, the American Bar Association also encourages trial judges to provide a statement of reasons when sentencing criminal defendants.[226] By providing a statement of reasons, sentencing courts (1) increase judicial transparency, (2) ensure justice, and (3) aid appellate review.[227]

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218. *Compare McCleary*, 182 N.W.2d at 522 (stating a statement of reasons not only aids appellate review but also helps the "trial judge[] focus on relevant factors that lead to their conclusions"), *with Davis*, 93 Ill.2d at 162-63 (holding that a statement of reasons is a waivable personal right that the trial court need not offer on its own).

219. *McCleary*, 182 N.W.2d at 522.

220. *Id.*

221. *Jackson*, 375 Ill. App. 3d at 804-05 (McDade, J., concurring).

222. *McCleary*, 182 N.W.2d at 522.

223. *Id.* at 512.

224. *Id.* at 521.

225. *Gallion*, 2004 WI 42 at ¶ 50.

226. *People v. Bryant*, 2016 IL App (1st) 14021, ¶ 32 (Hyman, J., concurring) (citing ABA Standards for Criminal Justice § 18-5.19(D)(b)(i) (3d ed. 1994)).

227. *See* ABA Standards for Criminal Justice § 18–5.19(D)(b)(i) (3d ed.1994) (stating sentencing judges "always provide an explanation of the court's reasons sufficient to inform the parties, appellate courts, and the public of the basis for

1. Increasing Judicial Transparency

The importance of judicial transparency can be traced back to colonial America, when citizens of the new country still feared returning to a monarchical government.[228] When judges are transparent in their decision-making, the public can examine the sentencing process.[229] This fosters and reinforces trust in the judiciary and ensures a corruption-free process.[230]

A statement of reasons relates directly to judicial transparency. [231] Judges may make "fair, unbiased, and particularized sentencing decisions," but without a statement of reasons, there is no way to ascertain the motive behind the sentence.[232] An explanation from the judge guarantees that he or she made a fair, honest, and unbiased decision.[233] It assures the public that the judge considered statutory standards in making an objective decision,[234] or at least increases the perception that judges hand down fair sentences.[235] Perception often matters even more than whether a person agrees with the substance of the sentence.[236]

Transparency involves more than the public simply knowing a judge's decision.[237] The public wants access to court documents, as well as the ability to attend different proceedings.[238] Viewing court records, however, serves little purpose if the individual reading them cannot understand the judge's reasoning. If hearing the decision no longer suffices, simply reading a decision with no further explanation also will not suffice. It naturally follows that the public requires a statement of reasons to fully trust in judicial sentencing decisions.

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the sentence").

228. Bernard Chao & Derigan Silver, *A Case Study in Patent Litigation Transparency*, 14 JDR 87, 88 (2014).

229. T.S. Ellis, III, *Sealing, Judicial Transparency and Judicial Independence*, 53 VILL. L. REV. 939, 940-41 (2008).

230. Chao & Silver, *supra* note 228, at 88.

231. *See Bryant*, 2016 IL App (1st) 140421 at ¶ 30 (Hyman, J., concurring) (stating "[t]he trial court may well have gone through extensive internal analysis, but absent any explanation of the factual basis for the sentence, for Bryant—and the public—his sentence lacks transparency and justification, though the sentencing judge did not intend to do so").

232. *Id.* at ¶ 31 (Hyman, J., concurring).

233. O'Hear, *supra* note 141, at 754.

234. *Id.* at 755.

235. *Kappes*, 782 F.3d at 845.

236. Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F. 525, 527 (2014).

237. Ellis, *supra* note 229, at 940-41.

238. *Id.* at 940-41 (holding that with advancement in technology, the public has ready access to court pleadings and decisions on the internet).

2. Ensuring Justice

Requiring judges to provide a statement of reasons not only ensures they consider mitigating factors, as the law requires of them, but decreases concerns of "racial and other bias, vindictiveness, grandstanding, emotional reaction, and cognitive bias."[239] Some overlap exists between judicial transparency and ensuring justice. Forcing judges to confront the possibility of actual biases guarantees justice, while judicial transparency increases the perception of justice by the public.

A lack of any reasoning in sentencing puts justice at risk.[240] Conclusory orders serve as a detriment to defendants and the justice system, as a whole.[241] Illinois sentencing law requires trial courts to weigh all relevant factors when sentencing criminal defendants.[242] Appellate courts presume trial courts took mitigating factors into account,[243] but without some kind of evidence in the record, the trial courts very well might not have considered the mitigating evidence at all.[244] With such a deferential standard, ensuring justice requires a statement of reasons.

An explanation of the sentence, which forces a judge to go through reasoning, corrects the anchoring effect that could occur after a judge initially hears of a sentence length from a statutory guideline, a prosecutor, or the PSI.[245] A judge spends the entire trial listening to the details of the criminal behavior but does not hear the mitigating evidence until the sentencing phase, which could lead the judge to discount the mitigating evidence.[246] Requiring a judge to go through their reasoning ensures the judge took the mitigating factors into account.

3. Aiding Appellate Review

Appellate courts afford wide deference to trial courts when

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239. O'Hear, *supra* note 141, at 755, 758.

240. *See Chavez-Mesa*, 138 S. Ct. at 1968 (Kennedy, J., dissenting) (stating Justice Kennedy had an issue with the majority's holding because it created difficulties for the defendants and courts in figuring out the sentencing court's reasons).

241. *Id.*

242. *Stacey*, 193 Ill. 2d at 209.

243. People v. Willis, 2013 IL App (1st) 110233, ¶ 123.

244. *See Jackson*, 375 Ill. App. at 805 ("In the sentencing situation, we are not only asked to presume that the trial judge has considered the factors in aggravation and mitigation but also…that he or she was aware of the relevant factors. The report of the [PSI] report . . . is singularly unhelpful in addressing the factors, particularly those in mitigation").

245. O'Hear, *supra* note 141, at 758. Anchoring effect refers to the "large body of research indicat[ing] that the articulation of a number—even an arbitrarily selected number—at the start of a decision-making process may play an important role in shaping the final outcome." *Id.*

246. O'Hear, *supra* note 141, at 758-59.

reviewing sentencing decisions because the sentencing courts sit in a better position to know the facts of the case because they can observe the testimonies and judge the credibility of the defendants and witnesses.[247] Appellate courts do review sentencing decisions if there exists an abuse of discretion.[248] By stating its reasoning on the record, a trial court facilitates better appellate review.[249]

As stated above, Illinois sentencing law requires trial courts to weigh all relevant factors when sentencing criminal defendants.[250] Without a statement of reasons, an appellate court cannot determine which factors, if any, a trial court considered when sentencing a defendant.[251] An appellate court that attempts to review the sentence for an abuse of discretion runs the risk of reweighing the factors, contrary to Illinois law.[252]

Furthermore, a court that does not wish to speculate which factors the trial court considered or risk reweighing the factors might remand the case.[253] This runs the risk of wasting judicial resources.[254] In *Chavez-Mesa*, Justice Kennedy voiced concern over what he saw as a chipping away of the federal requirement in § 3553.[255] The same concern Justice Kennedy had for federal courts applies to Illinois, as well. Illinois appellate courts that cannot tell whether or not a trial court abused its discretion, and do not wish to presume it did not, still could remand the case in the hopes that the trial court will explain its reasoning. The judiciary has a limited amount of resources, and remanding cases for an explanation uses even more resources by creating a second sentencing trial.[256] A trial judge could easily avoid this at the front end by adding a few extra sentences to a sentencing order that more fully explain their reasoning.[257]

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247. *Stacey*, 193 Ill. 2d at 209.

248. *Davis*, 2019 IL App (1st) 160408 at ¶ 57.

249. *Rita*, 551 U.S. at 357-58; *Jackson*, 375 Ill. App. at 807; *Bryant*, 2016 IL App (1st) 14021 at ¶ 34.

250. *Stacey*, 193 Ill. 2d at 209.

251. *Id.*

252. *Willis*, 2013 IL App (1st) 110233 at ¶ 123.

253. *Chavez-Mesa*, 138 S. Ct. at 1971 (Kennedy, J., dissenting).

254. *Id.* at 1968-72 (describing the remand of a case for further explanation as "an unwise allocation of judicial resources.")

255. *Id.*

256. *Id.*

257. *Id.*

> [W]hat could have taken a sentence or two at the front end now can, and likely will, produce dozens of pages of briefs, bench memoranda, orders, and judicial opinions as the case makes its way first to the appellate court, then back down to the trial court and perhaps back to the appellate court again.
>
> *Id.*

C. A Mismatch of Sentencing Objectives to Sentencing Procedure

With a new push towards rehabilitation and away from retribution,[258] the sentencing procedure in place must match the objectives. In Illinois, judges must balance "the seriousness of the offense . . . with the objective of restoring the offender to useful citizenship."[259] Rehabilitation focuses on curing the individual.[260] Each defendant is viewed as an individual with a unique case and story.[261] As an individual, it becomes more important for defendants to hear the reason for their punishment.[262] In the alternative, it becomes important for judges to understand why someone committed the offense and what services they may need. In order to rehabilitate a defendant, one must look to the learning theories behind punishments that support a statement of reasons.

According to some learning theories, the immediate consequences—the response immediately following the behavior—are shown to be more effective at preventing the unwanted behavior in the future than delayed consequences.[263] Researchers, who saw living beings as machines who simply reacted to the environment,[264] first used rats in boxes to demonstrate this concept.[265] It then expanded to humans and can still be seen in the criminal justice system today. The behavior, or the criminal action, receives two types of consequences. First, the immediate consequences can include the arrest, trial, and sentencing. Then, the delayed consequences can include incarceration, post-conviction stigma, and

258. Bijan Berenji, Tom Chou, & Maria R. D'Orsogna, *Recidivism and Rehabilitation of Criminal Offenders: A Carrot and Stick Evolutionary Game*, 9 PLOS ONE 1, 1 (2016) (stating the criminal justice system has made recent efforts to treat and rehabilitate offenders).

259. Ill. Const. art. I, § 12.

260. *See* Gertner, *supra* note 11, at 695 (stating that "crime [is] a moral disease").

261. Gall v. U.S., 552 U.S. 38, 52 (2007).

262. *Hill*, 878 N.E.2d at 273-74 (holding that a statement of reasons is necessary because it helps a defendant understand their punishment).

263. Paul Chance, *The Ultimate Challenge: Prove B.F. Skinner Wrong*, 30 BEHAV. ANALYSIS 153, 154 (2007).

264. Eugene E. Swaim, *B.F. Skinner and Carl R. Rogers on Behavior and Education*, 28 OREGON ASCD CURRICULUM BULLETIN 1, 6-7 (1972).

265. J.E.R. Staddon & D.T. Cerutti, *Operant Conditioning*, 54 ANNUAL REVIEW OF PSYCHOLOGY 115, 116-17 (2002); E-mail from Dr. Ann Jordan, Professor of Psychology at Lewis University to Allison Trendle (Sept. 19, 2019) (on file with author) [hereinafter Jordan E-mail]. B.F. Skinner, an early proponent of this theory, used rats in boxes. Staddon & Cerutti, *supra* note 265, at 116-17. Skinner placed the rats in a box with an electrical current running through it. Jordan E-mail, *supra* note 265. To shut the current off, the rats needed to press a lever. *Id.* After accidentally pressing the lever a few times, the rats learned the lever controlled the current and began going straight to the level and pressing it when Skinner placed them in the box. *Id.* The theory then expanded to human behavior. *Id.*

any other consequence that occurs long after the behavior.

The immediacy of the consequence increases the effectiveness of preventing future negative consequences, such as criminal behavior.[266] However, delayed consequences can work if preceded by a positive immediate consequence.[267] A person incarcerated for committing a crime might view the consequence as completely negative. By providing a statement of reasons and facilitating actual reflection, judges add meaning to the consequence which causes the defendant to associate the consequence more clearly with the crime. It follows that this increases the chances of effectiveness.

When the person giving the consequence—the judge—provides a thorough explanation for the punishment—a statement of reasons for the sentence imposed—the punishment across all delay intervals showed an equal effect.[268] Essentially, humans are not the rats that learning theorists used in initial studies. We are complex, thinking beings—even those who commit crimes. A punishment without explanation might not suffice to deter future criminal behavior because people learn best when they understand their punishment.[269]

Social learning theories also provide some insight into punishment. Humans tend to more closely associate with people who share their ideas in order to avoid contrary opinions to their own beliefs.[270] Very few people, if any, want to be criminals—like the young man in the hypothetical scenario at the beginning of this comment. Strain theory suggests that individuals who fail to achieve their goals through legitimate and legal means turn to crime out of frustration.[271] Criminal behavior, like good behavior, then gets reinforced through social relationships.[272] If an entire community feels frustrated because they are unable to achieve their goals through legitimate means, the criminal behavior individuals turn to consistently get reinforced through social relationships in the community.

In order to break the cycle of thinking, contrary opinions need to be introduced.[273] By incarcerating someone with other

266. James N. Meindl & Laura B. Casey, *Increasing the Suppressive Effects of Delayed Punishers: A Review of Basic and Applied Literature*, 27 BEHAV. INTERVENT. 129, 130 (2012).

267. Chance, *supra* note 263, at 154.

268. *See* Meindl & Casey, *supra* note 266, at 138 (describing the effects of an explanation on delayed punishments in general).

269. Jordan E-mail, *supra* note 265 (discussing how learning theories have advanced from B.F. Skinner's theory of operant conditions); *see also* Swaim, *supra* note 264, at 6-7 (stating that B.F. Skinner saw living organisms, including humans, as "merely a physical organism" that simply responds to its environment and does not think).

270. Chance, *supra* note 263, at 155.

271. Robert Agnew, *A Revised Strain Theory of Delinquency*, 64 SOC. FORCES 151, 151 (1985).

272. Chance, *supra* note 263, at 155-66.

273. *See* Chance, *supra* note 263, at 155-66 (stating that contrary opinions

individuals who share the same thoughts and criminal behaviors, the criminal justice system fuels extremist thinking. By providing an explanation, judges temper the social reinforcement a defendant might receive in prison by injecting a contrary thought.

Additionally, social learning includes the integration of the beliefs, goals, actions, and consequences of others into one's own life.[274] Just as criminal behavior can be reinforced in prison by other inmates, good behavior can be reinforced by a judge who takes the time to impress society's beliefs and consequences on a defendant. By connecting beliefs to behaviors to consequences, the individual becomes less likely to commit the crime again in the future.[275]

D. Addressing the Separation of Powers Concerns

One of the few instances where courts will construe "shall" in a statute to be permissive rather than mandatory is when a statute faces constitutional attacks.[276] Otherwise, "shall" generally denotes a mandatory action, not permissive or discretionary.[277] The majority in *Davis* discussed at length its concern that construing the statute as imposing a mandatory duty on lower courts would cause a separation of powers issue.[278] The Illinois Constitution contains a separation of powers clause, stating, "The legislative, executive, and judicial branches are separate. No branch shall exercise power properly belonging to another."[279] The Constitution vests the judicial powers in the Illinois Supreme Court, one Appellate Court, and the Circuit Courts.[280]

Courts have consistently recognized sentencing as an exclusively judicial duty.[281] This is because the Statute "attempt[ed] to dictate the actual content of the judge's procurement of sentence," and construing the Statute as mandatory would allow a legislative interference on a core judicial duty.[282] In order for the Statute to be constitutionally valid, the majority held that the "shall" offered permissive direction to sentencing courts.[283]

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temper extremist views).

274. Joshua W. Buckholtz & René Marois, *The Roots of Modern Justice: Cognitive and Neural Foundations of Social Norms and Their Enforcement*, 15 NATURE NEUROSCIENCE 655, 656 (2012).

275. *See* Meindl & Casey, *supra* note 266, at 129 (stating an explanation for punishment decreases the likelihood of negative behavior in the future).

276. Leonard A. Nelson, *Punitive Damages Under the Illinois Sales Representative Act*, 86 ILBJ 622, 624 (1998). Other instances when a court interprets "shall" as permissive is when the statute's language is unclear or its context suggests a permissive intent. *Id.*

277. *Id.*

278. *Davis*, 93 Ill. 2d at 162-63.

279. Ill. Const. art. II, § 1.

280. *Id.*

281. *Davis*, 93 Ill. 2d at 161.

282. *Id.* at 160-61.

283. *Id.* The majority correctly noted the judicial branch has a "duty to

Argument exists, however, that separation of powers poses no such problem in a mandatory requirement of sentence explanations.[284] As noted by Justice Simon, and other judges after him, the doctrine never served to completely separate the three branches of government.[285] Some overlap between the branches will naturally exist because each makes up one-third of the government.[286] As long as one branch does not hold the entirety of another branches powers,[287] nothing prohibits that branch from performing some duties of a different branch.[288] The drafters' concern centered around coercion amongst the branches, not rigid separation.[289]

In fact, where the legislature does not "unduly infringe upon the inherent powers of the judiciary," it can create laws to govern judicial powers.[290] Illinois courts have upheld statutes that govern the judiciary's power over sentencing.[291]

Two years after *Davis*, the Court upheld a statute creating mandatory life imprisonment terms.[292] The Court attempted to

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construe acts of the legislature . . . to affirm their constitutionality and validity." *Id.* at 161. To do so, the majority held the Statute as advisory. *Id.* at 161-62.

284. *Davis*, 93 Ill. 2d at 164 (Simon, J., dissenting).

285. *See, e.g.*, *id.* (Simon, J., dissenting) (citing Field v. People ex rel. McClernand, 3 Ill. 79, 83-84 (1839) (*superseded by constitutional amendment on other grounds*, Ill. Const. art. V, § 12)) (stating that the separation of powers doctrine does not call for the three branches of government to be kept so separate that they have no connection or dependence on the other branches). Justice Simon also discusses Federalist Paper No. 47, often credited to James Madison. *Id.*

286. In re Derrico G., 2014 IL 114463, ¶ 76.

287. *Id.*

288. Elizabeth M. Bosek et al., *Acquiescence in Constitutionality or Passage of Time*, 11 IL-LP CONSTLAW § 50 (2019).

289. *Davis*, 93 Ill. 2d at 164-65.

290. People v. Bryant, 278 Ill. App. 3d 578, 584 (1996) (citing *Youngbey*, 82 Ill. 2d at 560) (stating "[t]he General Assembly has the power to enact laws governing judicial practices when the laws do not unduly infringe upon the inherent powers of the judiciary or conflict with a rule of this court.").

291. *See generally Griffin*, 92 Ill. 2d at 54 (upholding a section of the Juvenile Court Act that required courts to state its basis when committing a juvenile to the Department of Corrections); *Youngbey*, 82 Ill. 2d at 560 (upholding a statute that held PSI reports mandatory and nonwaivable); *see also Davis*, 93 Ill. 2d at 167 (discussing the validity of legislative imposed minimum and maximum guidelines).

292. People v. Taylor, 102 Ill. 2d 201, 206-08 (1984). Defendants shot and killed a man who had allegedly stolen jewelry from one of them. *Id.* at 204. The trial court convicted the defendants of murder and armed violence before sentencing them to natural life sentences. *Id.* at 203. The court stated the statute required it to sentence the defendants to natural life sentences for the crime they committed. *Id.* at 204-05. The appellate court found that a mandatory life sentence prevented the court from considering, pursuant to the constitution, mitigating and rehabilitative factors. *Id.* at 205. The appellate court, following logic similar to *Davis*, held the statute was directory, not mandatory, in order to avoid declaring it unconstitutional. *Id.* The Illinois Supreme Court reversed and upheld the statute as mandatory. *Id.* at 206-08.

distinguish *Davis* by stating that mandatory sentencing terms laws fell within the "legislative power to define crimes and fix punishment."[293] In doing so, it looked at the sentencing laws in other states, including some that have a statement of reasons requirement.[294] As Justice Simon noted, this seemed to dictate the *actual* content of the sentencing more so than requiring judges to explain their reasoning, unless sentencing is entirely without reason.[295] Requiring courts to explain how they reached the substantive portion of their sentence does not dictate content at all. A mandatory natural life sentence, however, would seemingly remove *all* discretion a court has over its judicial power of sentencing. Although the law has some serious logical errors, *Davis* continues as precedent today.

E. Davis as Precedent

As noted above, the appellate courts adheres strictly to *Davis* as precedent and affirms sentences with no statement of reasons attached.[296] An argument exists to uphold *Davis* under the doctrine of stare decisis. As discussed more in-depth below, stare decisis does not prevent the courts from providing a statement of reasons.

IV. PROPOSAL

As it stands, despite being contrary to federal law, almost a quarter of states' laws, notions of justice, and theories of learning, *Davis* controls an important part of sentencing procedure in Illinois. Justice requires *Davis* be overturned, either legislatively, which creates its own issues, or judicially.

1. Overturning Davis Legislatively

"Congress is free to change [the] Court's interpretation of its legislation."[297] When the legislature disagrees with a court's interpretation, it can create new statutes that effectively overturn

293. *Id.* at 208.

294. *Id.* at 209 (citing People v. Hall, 242 N.W.2d 377 (Mich. 1976); State v. Vaccaro, 403 A.2d 649 (1979)).

295. *Davis*, 93 Ill. 2d at 166.

296. *Accord Jackson*, 375 Ill. App. 3d at 802 (stating "there is no mandatory requirement that the trial judge recite all of the statutory factors before imposing sentence"); *see also Jackson*, 375 Ill. App. 3d at 807 (Wright, J., concurring in part and dissenting in part) (stating "in the two decades since our supreme court's decision in *Davis*, trial courts seem to have substituted the flexibility of the permissive 'shall' with a practice of creating records that "need not" demonstrate careful reflection prior to sentencing").

297. Exelon Corp. v. Department of Revenue, 234 Ill. 2d 266, 302-03 (2009) (Thomas, J., specially concurring) (internal citations omitted).

a court's holding.[298] In fact, legislatures and Congress have done so in the past. For example, the United States Congress overturned the 2008 United States Supreme Court decision in *United States v. Santos*[299] with the Fraud Enforcement and Recovery Act in 2009 (FERA).[300] By reading the Senate Report, Congress' intentions with FERA become clear.[301] Congress wanted to correct what it saw as an over-limiting decision by the Court, so it amended the False Claims act to include FERA.[302]

For the purposes of this Comment, however, even though the legislature could revise a statute that the court held unconstitutional, doing so here would not have any effect. Any law that the legislature could create that would protect justice by requiring a statement of reasons would only get struck down by the court under *Davis*. This only leaves the Illinois Supreme Court overturning *Davis* judicially.

2. Overturning Davis Judicially

Justice Hyman recognized the need for the Illinois Supreme Court to reconsider *Davis*.[303] While he urged the Court to create a rule to "get around" *Davis*,[304] the Court should outright overturn *Davis*, despite stare decisis implications.

Stare decisis lies at the bedrock of American jurisprudence.[305]

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298. *The Court and Constitutional Interpretation*, SUPREME COURT OF THE UNITED STATES, supremecourt.gov/about/constitutional.aspx [perma.cc/8K4K-URU2] (last visited Oct. 21, 2020).

299. U.S. v. Santos, 553 U.S. 507 (2008). The defendant ran an illegal lottery in Indiana for approximately twenty years. *Id.* at 509. He was convicted in the Northern District of Indiana of running an illegal gambling business and money laundering under federal law. *Id.* at 509-10. The defendant appealed, and the Court of Appeals affirmed the conviction. *Id.* He then moved to collaterally attack his conviction and sentence under 28 U.S.C. § 2255. *Id.* The District Court rejected all his claims except the challenge to the money-laundering conviction. *Id.* A subsequent Seventh Circuit decision had "held that the federal money-laundering statute's prohibition of transactions involving criminal 'proceeds' applies only to transactions involving criminal profits, not criminal receipts." *Id.* (citing United States v. Scialabba, 282 F.3d 475 (2002)). Applying *Scialabba*, the District Court vacated the defendant's conviction for money laundering. *Id.* The Seventh Circuit, affirming *Scialabba*, affirmed the District Court. *Id.* The Supreme Court affirmed, using the "rule of lenity" which requires ambiguous statutes to be interpreted in favor of the defendants. *Id.* at 514.

300. The Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617 (2009).

301. John F. Savarese, Ralph M. Levene, & Carol Miller, *New Tools for the Government's Fight Against Financial Fraud*, 60 NO. 7 GLSLR 13 (2009).

302. *Id.*

303. *Bryant*, 2016 IL App (1st) 14021 at ¶ 35 (Hyman, J. concurring) ("I hope our supreme court sees fit to consider this issue and formulate a court rule to get around its decision in *Davis*.").

304. *Id.*

305. *See Exelon Corp.*, 234 Ill. 2d at 302-303 (Thomas, J., specially concurring) (stating that "our system demands that we adhere to our prior

Courts will typically follow precedent, even when judges disagree with it.[306] This, however, leads to predicaments like the one at issue here. Despite the unjustness of the law, courts follow *Davis* in the name of precedence.[307] Some judges believe that stare decisis means it is more important that "the applicable rule of law be settled than it be settled right."[308] Courts, however, are not stuck with precedent. When holdings become "unworkable," or the deciding court used poor reasoning to reach the conclusion, the "[C]ourt has never felt constrained to follow precedent."[309]

When the First District discussed *Davis*, Justice Hyman encouraged trial courts to continue to go above and beyond the law by offering a statement of reasons.[310] By encouraging this conduct, appellate justices protect defendants and the justice system. Their encouragement can also be taken as a sign that a statement of reasons does not impede on a judge's ability to perform judicial duties. Their words, however, have taken our system as far as they can. Without the Supreme Court mandating it, trial courts will continue down the road Justice Simon foresaw almost forty years ago.[311]

It has now been nearly four decades since the Supreme Court has handed down *Davis*. "Our supreme court in *Davis* . . . did not intend for acceptable judicial practice to completely omit *all* reference to the statutory standards when pronouncing punishment."[312] Whatever the *Davis* court's legal reasoning might have been in 1982, it has resulted in severely unjust results in modern sentencing practices. If a court finds other legal reasoning "intrinsically sounder," it may depart from the questionable precedent.[313]

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interpretations."). The Illinois Supreme Court then notes that the duty to revise statute falls on the legislature, not the court. *Id.* at 303.

306. People v. Mitchell, 189 Ill. 2d 312, 338 (2000).

307. *Bryant*, 2016 IL App (1st) 140421 at ¶ 26 ("Precedent requires me to concur with the majority's holding that the sentencing court did not err in imposing Bryant's sentence.").

308. *Mitchell*, 189 Ill. 2d at 361 (Freeman, J., dissenting) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827-28 (1991)) (internal citations omitted). This language originally came from a 1932 United States Supreme Court case. *Id.* at 363. In Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1932), Justice Brandeis, joined by Justices Roberts and Cardozo put forth this idea in a dissent. *Id.* The Court then addressed it again in *Payne*, slightly qualifying the statement. *Payne*, 501 U.S. at 827-28.

309. *Payne*, 501 U.S. at 827-28. The Supreme Court of the United States spoke of itself, but the same logic can apply to the Illinois Supreme Court.

310. *Bryant*, 2016 IL App (1st) 140421 at ¶ 35.

311. *Jackson*, 375 Ill. App. 3d at 804-05 (McDade, J., concurring). Justice McDade voiced concern that sentencing has turned into an afterthought and will continue to be so until the Supreme Court changes *Davis*. *Id.*

312. *Id.* at 809.

313. *Cf.* Brief for Petitioner at 41, Ramos v. Louisiana, No. 18-5924 (United States Supreme Court argued Oct. 7, 2019) (citing Helvering v. Hallock, 309 U.S. 106, 119 (1940) (stating stare decisis does not require adherence to

Defendant-Appellants occasionally argue that the Appellate Court should follow the reasoning of Justices Hyman, Wright, and McDade, instead of that in *Davis*.[314] Appellate justices pled with the Illinois Supreme Court, [315] setting the case up for an appeal. The Supreme Court should revisit *Davis* by hearing a case similar to the hypothetical described in the introduction of this comment. This type of case best illustrates the injustice done to defendants by *Davis*. As the federal courts chip away at their own standard,[316] the facts of the case should be similar to those in *Rita* or *Shoffner*. By hearing an analogous case, the Court can root its own reasoning in that used by the United States Supreme Court and Seventh Circuit. The Court should examine cases such as *Davis*, *Shoffner* and other federal cases, and state cases from Nevada, Wisconsin, and other states with comparable standards. Then, after discussing and relying on decisions which allow the reversal of precedence, it should reverse its decision in *Davis*.

After deciding *Davis* should be overturned to increase judicial transparency, foster justice, and ensure the other benefits discussed earlier in this comment, the Illinois Supreme Court should adopt the framework outlined in *Shoffner*.[317] In the hypothetical described above, the sentencing judge offers far less explanation than the second sentencing judge in *Shoffner*.[318] Under *Shoffner*, the sentencing court must do more than acknowledge it considered both

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precedent that "colli[ded] with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience"). The Petitioner in *Ramos* argued that the Sixth Amendment's right to a unanimous jury verdict should be incorporated against the states through the Fourteenth Amendment Due Process clause. *Id.* at 15. Part of Petitioner's argument focused on the narrowly decided 1972 case Apodaca v. Oregon, 406 U.S. 404 (1972). *Id.* at 34. In a 5-4 decision, Justice Powell's "outcome-determinative" vote held that the Fourteenth Amendment did not incorporate the Sixth Amendment requirement of jury unanimity against the states. *Id.* (citing *Apocada*, 406 U.S. at 404). Justice Powell rejected prior precedent when reaching his decision, which Petitioner labeled a "fluke of voting". *Id.* Because it "flouted then-existing precedent and has since been squarely repudiated," Petitioner argued for the overturn of *Apocada*. *Id.* at 40-41. Similarly, legal and psychological theories have since refuted the *Davis* court decision. Justice Powell abruptly broke from "carefully reasoned precedent" and "declined . . . to follow . . . established consensus" in his concurrence in *Apocada*. *Id.* at 41. Although the *Davis* court did not break from carefully reasoned precedent, Illinois has subsequently declined to follow the established consensus of the federal government and many state governments regarding a statement of reasons. The reasoning argued by the Petitioner in *Ramos* was derived from a foundation of caselaw and can be followed in this instance.

314. *Davis*, 2019 IL App (1st) 160408 at ¶¶ 82.

315. *Bryant*, 2016 IL App (1st) 140421 at ¶ 35 (Hyman, J., concurring) (stating "I hope our supreme court sees fit to consider this issue and formulate a court rule to get around its decision in *Davis*.").

316. *Rita*, 551 U.S. at 381-82.

317. *Shoffner*, 942 F.3d at 823-24.

318. *Id.* at 821-22.

sides' arguments, the statutory factors, and the PSI report.[319] In the hypothetical, the sentencing judge simply stated he considered the arguments and sentencing factors. This clearly does not meet the Seventh Circuit standard, and the Illinois Supreme Court should remand for further explanation.

Even if the judge had stated what factors he had considered, the statement of reasoning would still fall short of the standard set out in *Shoffner*. "As a threshold matter," the sentencing court must explain how it assessed the statutory factors.[320] This does not require the sentencing judge to provide a lengthy explanation, but he or she should at least briefly explain which factors it considered and how it weighed those factors. This will prevent further remands and appeals, directly addressing Justice Kennedy's concerns about judicial economy as discussed above.[321]

Furthermore, the Illinois Supreme Court should look at the arguments made by the public defender during the sentencing hearing on behalf of the defendant when considering a remand of the case. The sentencing judge, perhaps inadvertently, dismissed the lengthy discussion of the defendant's rehabilitation and potential for further rehabilitation. In *Shoffner*, as it should be in Illinois state courts, the burden shifts to the court to explain why it did not consider this factor more favorably.[322] Therefore, unless the sentencing judge provides this explanation, the Court will remand the hypothetical case.

As our understanding of human learning and justice advances, it makes little sense to continue to adhere to precedent that directly contradicts our knowledge. Justice Simon, in 1982, noted that even small children "demand[] an explanation" when being punished.[323] Psychologists now understand that punishments, especially delayed punishments, require a thorough explanation to be effective.[324] Humans are not rats in boxes who learn from electrical shocks, but our law still treats defendants as such. Our sense of justice has evolved over time, but, even as we turn towards rehabilitation, Illinois law lags behind. With no explanation, rehabilitation becomes more difficult for the defendant. This new information supports overturning *Davis* and creating a new law that more closely aligns with what the scientific community knows about human behavior and what the legal community understands about justice — this would-be sound reasoning that the *Davis* majority seemingly never considered.

319. *Id.* at 823.
320. *Id.*
321. *Chavez-Mesa*, 138 S. Ct. at 1971 (Kennedy, J., dissenting).
322. *Shoffner*, 942 F.3d at 823.
323. *Davis*, 93 Ill.2d at 163 (Simon, J., dissenting).
324. Meindl & Casey, *supra* note 266, at 138.

V. CONCLUSION

The world has changed greatly from 1982, but the Illinois Supreme Court's interpretation of 730 ILCS 5/5-4.5-50(c) has remained the same despite overwhelming proof that it should change. The appellate courts continue to follow *Davis*, occasionally critiquing it or asking for it to be circumvented, and trial courts provide less explanation for sentencing as time goes on. The law has become unworkable and only ensures that appellate courts cannot follow the constitution without trial courts going beyond the simple requirements of the law. The scant, unsound logic has created an injustice that wreaks havoc on the criminal justice system.

For almost forty years, the holding in Davis has gone largely unnoticed by the legal system. Few law review articles have cited Davis at all, and none have discussed it in depth to analyze and critique its holding. The appellate court cites it briefly when defendants raise the issue on appeal, but pass it off as precedent. We need to reengage with Davis and question it. What did not work in 1982 still does not work today and represents one more broken piece in the system that needs to be addressed and fixed. Trial courts can continue to go above and beyond, as Justice Hyman has suggested,[325] but Justice Simon's voice still resonates from his dissent: "[T]he absence, or refusal, of reasons is a hallmark of injustice," and, for the sake of defendants, our judicial system, and society as a whole, it needs to end.[326]

325. *Bryant*, 2016 IL App (1st) 140421 at ¶ 35.
326. *Davis*, 93 Ill. 2d at 163 (Simon, J., dissenting).