

2024 IL App (1st) 240932
No. 1-24-0932B
Opinion filed September 10, 2024

Third Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 23 CR 12066
)	
WILLIAM COOKSEY,)	Honorable
)	William G. Gamboney,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justices Martin and D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 Defendant William Cooksey is charged with 11 counts of attempted first degree murder, 1 count of aggravated battery with a firearm, 5 counts of aggravated discharge of a firearm, and 5 counts of reckless discharge of a firearm related to a shooting that occurred, apparently as the product of a road rage incident, on January 18, 2023. Defendant was arrested on October 26, 2023. While the record does not indicate what transpired between defendant's arrest and the beginning

of 2024, the State filed a petition for pretrial detention on January 9, 2024.¹ The trial court granted that petition the same day and denied defendant release pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)). Defendant subsequently sought release from his detention on April 4, 2024, which the trial court denied. Defendant now appeals the denial of his request to be released from detention.

¶ 2 For the following reasons, we dismiss defendant's appeal without prejudice.

¶ 3 I. BACKGROUND

¶ 4 On April 4, 2024, defendant requested a hearing to review his detention, which section 110-6.1(i-5) of the Code requires. *Id.* § 110-6.1(i-5). The trial court held a hearing the same day. Both parties provided factual proffers.

¶ 5 The State maintained that on January 18, 2023, at 9:48 a.m., one of the victims, none of whom were identified by name in the proffer, was driving in a blue Chevy on the way to drop her children at school. There were two children in the car and a male passenger in the passenger seat. As they drove, they changed lanes rapidly and cut off a gray 2021 Dodge Ram, driven by someone later identified as defendant. Defendant pulled up alongside the driver's side of the victims' car, rolled down his passenger-side window, and began to yell at the victims. Defendant got behind the victims again and pulled up along the passenger side of the victims' car. Defendant then rolled down his driver's side window, reached into the center console, and produced a gun. He fired multiple times into the passenger side of the victims' car, striking one of the victims in the head.

¹The State urges us to take judicial notice of documents from the website of the clerk of the circuit court of Cook County, which show that defendant's initial detention hearing took place on October 28, 2023. This would suggest that the January 9, 2024, detention order was one made pursuant to section 110-6.1(i-5) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(i-5) (West 2022)). As defendant is appealing neither of these orders, it has no impact on our ultimate decision.

Multiple .45-caliber shell casings were recovered from the street. The victim who was shot in the head sustained severe damage to the frontal lobe of his brain and required significant physical rehabilitation to relearn how to walk, talk, eat, and use the bathroom. One of the children in the car had her eardrum ruptured by the gunshots.

¶ 6 Several months later, on May 4, 2023, officers conducted a traffic stop of defendant, who was in a 2021 gray Dodge Ram. After obtaining defendant's identity, they placed his photo in a photo array. Three of the four victims positively identified defendant as the person who shot at them on January 18, 2023. On October 26, 2023, officers once again stopped defendant. Defendant ignored orders to stop and place his hands in the air, and officers observed a "heavy-weighted object" in the front pocket of defendant's sweatshirt. The officers attempted to grab defendant, who slipped out of his sweatshirt and fled on foot. The sweatshirt contained a loaded .40-caliber handgun.

¶ 7 Defendant was eventually located hiding near a trash can nearby and made a custodial statement admitting to ownership of the recovered firearm. He did not have a valid Firearm Owners Identification (FOID) card nor a valid concealed carry license (CCL). Defendant was subsequently charged with aggravated unlawful use of a weapon (UUW) in case number 23-CR-12049. Defendant's criminal history includes a 2007 conviction for aggravated UUW, for which he received probation that was terminated satisfactorily, and a 2011 misdemeanor conviction for aggravated assault on a State of Illinois employee, for which he received 20 days in the Cook County Department of Corrections.

¶ 8 Defendant's proffer maintained that there were five people in the victims' car, not four, and that none of them were children. According to defendant, the victims were in a Chevy Trax, which counsel described as "a small vehicle, very low to the ground," and the shooter was in a

large pickup truck. Thus, counsel challenged the possibility that the victims could have seen the shooter reach into the center console and argued that they would have had a limited view of the shooter himself. Additionally, counsel added that the victims initially claimed the shooter was driving a Chevy Avalanche, not a Dodge Ram. One of the victims described the shooter as a black male with a beard and dreadlocks, and counsel stated that defendant is bald and lost all of his hair at a young age.

¶ 9 Defendant was 37 years old and was born and raised in Chicago. He had a consistent work history and had done work with organizations in the past aimed at preventing violence. He also volunteered his time delivering meals to the less fortunate. Defendant lived with his fiancée and their two children and was the primary source of income for his family.

¶ 10 Regarding defendant's arrest, counsel proffered that defendant was being followed by an officer in plain clothes in an unmarked car, and that the officer never identified himself. This prompted defendant to flee. Counsel also recounted multiple instances where defendant was the victim of a crime, which prompted him to carry a firearm out of necessity even though he was not legally permitted to possess one. Finally, defense counsel argued that defendant's presence in the community between January and October 2023 without additional incident demonstrated his ability to comply with electronic monitoring.

¶ 11 The trial court found that the State proved by clear and convincing evidence that (1) the proof is evident or the presumption great that defendant committed the charged offenses, (2) defendant poses a real and present threat to the community, and (3) no set of conditions can mitigate that real and present threat. The trial court ordered that defendant remain detained. In its findings, the trial court noted defendant's illegal possession of a firearm at the time of his arrest and how quickly defendant resorted to violence during the road rage incident as evidence of why

defendant could not follow constraints placed upon him. It also reasoned that electronic monitoring would not prohibit the recurrence of a similar incident. Defendant filed a notice of appeal on April 17, 2024.

¶ 12

II. ANALYSIS

¶ 13 On appeal, defendant argues that the State failed to meet its burden of proof to justify pretrial detention as to every element outlined in section 110-6.1(e) of the Code (*id.* § 110-6.1(e)). But first, the State argues that we lack jurisdiction to hear defendant's appeal because defendant filed his notice of appeal two days after Illinois Supreme Court Rule 604(h) was amended to require parties to first file a motion in the trial court seeking the same relief to be sought on appeal and defendant did not do so. Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024).

¶ 14 Nothing about Rule 604(h)(2)'s language, which we interpret by giving its language its plain and ordinary meaning, convinces us that Rule 604(h)(2) is jurisdictional in nature. See *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 22. When construing a rule of the supreme court, our primary goal is to ascertain and give effect to the intent of the drafters. *Id.* The most reliable indicator of that intent is the language used, given its plain and ordinary meaning. *Id.* In determining the plain meaning of the rule's terms, a court must consider the rule in its entirety, keeping in mind the subject it addresses and the apparent intent of the drafters in enacting it. *Id.* Courts will also interpret the rule so that no part of it is rendered meaningless or superfluous and will not depart from the plain language of the rule by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. *Id.* The provision in Rule 604(h)(2) states:

“As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such

relief. The trial court shall promptly hear and decide the motion for relief. Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.” Ill. S. Ct. R. 604(h)(2) (eff. April 15, 2024).

¶ 15 We are mindful that the rule frames this motion as a “prerequisite to appeal” and that the party taking an appeal “shall” file the aforementioned motion. *Id.* However, considering the rule in its entirety also leads us to examine other provisions in Rule 604, and Rule 604(d) provides important context. Rule 604(d) states that “[n]o appeal from a judgment entered upon a plea of guilty shall be taken” unless a defendant first files a motion to withdraw the plea of guilty and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024). The rule further states that any issue not raised in the motion “shall be deemed waived.” *Id.* Our supreme court has not interpreted this language to be a jurisdictional bar. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003) (“The discovery that a defendant has failed to file a timely Rule 604(d) motion in the circuit court does not deprive the appellate court of jurisdiction over a subsequent appeal.”).

¶ 16 Rule 604(d)’s language, on its face, presents as even more strict than Rule 604(h)(2)’s language and nevertheless does not present a jurisdictional requirement. Moreover, given that the supreme court has already clarified that Rule 604(d)’s requirements are not jurisdictional in nature, we know that the court is aware of the possible issue. *Id.* Thus, in drafting Rule 604(h)(2), it presumably would have explicitly stated that the motion is a prerequisite to appellate jurisdiction if that was what it intended. Instead, like Rule 604(d), there is a different, specific consequence provided: waiver of issues not contained in the motion. Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). Our rules regarding waiver are related to administrative convenience and are not a jurisdictional

bar. *People v. Lann*, 261 Ill. App. 3d 456, 466 (1994). Notably, the consequence that is outlined in the rule would be meaningless if the failure to file the motion operated as a jurisdictional bar. Moreover, the provision found in Rule 604(h)(2) was part of the April 15, 2024, amendment to Rule 604(h), which followed the recommendations made by the Illinois Supreme Court's Pretrial Release Appeals Task Force (Task Force). The Task Force's report, published March 1, 2024, specifically recommended the provision in Rule 604(h)(2) as a means to give the trial court the opportunity to correct errors, crystallize the issues being raised in the trial court, streamline the appeal process, and make explicit the rules regarding issue preservation. Ill. S. Ct. Pretrial Release Appeals Task Force, Report and Recommendations 5-7 (2024), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/628434e3-d07f-4ead-b1f6-4470d7e83bf3/Pretrial%20Release%20Appeals%20Task%20Force%20Report_March%202024.pdf [<https://perma.cc/GDS4-7UT7>]. While we still look to the plain language of the rule as our primary source of guidance, these recommendations provide some additional insight into the purpose of the provision. *Ferris, Thompson & Zweig, Ltd.*, 2017 IL 121297, ¶ 22. None of the Task Force's recommendations revolved around a perceived need to make a second jurisdictional prerequisite to initiate an appeal beyond the filing of the notice of appeal itself. See Ill. S. Ct. R. 604(h)(3) (eff. Apr. 15, 2024). Thus, we do not agree that the lack of a motion filed by defendant deprived us of jurisdiction.

¶ 17 Whether we can reach the merits of defendant's argument is, however, a different issue. Just as *Flowers* maintained that the failure to file the requisite Rule 604(d) motion is not a jurisdictional bar, it also held that the failure to file such a motion precludes us from considering the appeal on the merits and that we must dismiss the appeal. *Flowers*, 208 Ill. 2d at 301. Rule

604(d) contains no such language that the failure to file the required motion precludes us from hearing the appeal on its merits, only that issues not included in the motion are deemed waived. Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024). Nevertheless, our supreme court has deemed the requisite Rule 604(d) motion a procedural requirement necessary to deciding the merits of the appeal. Given the similarities between the language of Rule 604(d) and Rule 604(h)(2), interpreting Rule 604(h)(2) in the context of its surrounding provisions leads us to conclude that the motion required by Rule 604(h)(2) is a similar procedural prerequisite to deciding the merits of an appeal. See *Ferris, Thompson & Zweig, Ltd.*, 2017 IL 121297, ¶ 22.

¶ 18 In *People v. Foster*, 171 Ill. 2d 469, 470 (1996), the defendant failed to file a written motion challenging his guilty plea, and the trial court failed to admonish him regarding that requirement. The appellate court dismissed defendant's appeal, and our supreme court reversed and remanded the case to the trial court for strict compliance with Rule 604(d). *Id.* at 474. The defendant argued for an exception that compliance with Rule 604(d) was only necessary when the grounds for the appeal were not apparent from the record. *Id.* But the supreme court disagreed, reasoning that strict compliance with Rule 604(d) is always required and, where the rule is not complied with, the appellate court has no discretion to entertain the appeal. *Id.*

¶ 19 The required course of action, then, is to dismiss defendant's appeal without prejudice because the failure to file the required Rule 604(h)(2) motion precludes us from reaching the merits of defendant's appeal. *Flowers*, 208 Ill. 2d at 301; *Foster*, 171 Ill. 2d at 474. The rationale provided by the Task Force for Rule 604(h)(2) supports the imposition of such a requirement. Ill. S. Ct. Pretrial Release Appeals Task Force, Report and Recommendations 5-7. Given that the version of Rule 604(h) now in effect permits an appeal at any time before conviction and imposes no time

frame for the filing of a Rule 604(h)(2) motion, defendant remains free to appeal the disposition of any Rule 604(h)(2) motion regarding the trial court's order in this case, should he choose to file such a motion. Ill. S. Ct. R. 604(h)(2)-(3) (eff. Apr. 15, 2024). Section 110-6.1(i-5) of the Code also requires the trial court to continue to reexamine the necessity of defendant's detention at each and every court date. 725 ILCS 5/110-6.1(i-5) (West 2022).

¶ 20

III. CONCLUSION

¶ 21 For the foregoing reasons, we dismiss defendant's appeal without prejudice.

¶ 22 Appeal dismissed.

People v. Cooksey, 2024 IL App (1st) 240932

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 23-CR-12066; the Hon. William G. Gamboney, Judge, presiding.

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