

NOTICE  
Decision filed 03/19/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 231049-U  
NOS. 5-23-1049, 5-23-1190 cons.  
IN THE  
APPELLATE COURT OF ILLINOIS

NOTICE  
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 23-CF-306
	)	
LYDELL J. NEAL,	)	Honorable
	)	Jerry E. Crisel,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE BOIE delivered the judgment of the court.  
Justices Moore and Barberis concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We affirm the circuit court’s detention order in appeal 5-23-1049, where the circuit court’s factual findings were not against the manifest weight of the evidence and the circuit court’s ultimate determination to deny the defendant pretrial release was not an abuse of discretion. In appeal 5-23-1190, we dismiss in part and vacate in part where this court lacks jurisdiction and the defendant’s motion for reconsideration was untimely.
- ¶ 2 On October 18, 2023, the circuit court ordered the defendant, Lydell J. Neal, detained, and the defendant timely appealed (appeal 5-23-1049). The defendant filed a motion to reconsider the circuit court’s detention order on November 6, 2023, and the circuit court denied the defendant’s motion on November 9, 2023. On November 15, 2023, the defendant filed a notice of appeal stating that he was appealing both the October 18, 2023, and November 9, 2023, orders of the circuit court (appeal 5-23-1190). Both appeals are now pending before this court, and in the interest of judicial

economy, this court, *sua sponte*, consolidates the appeals for disposition. For the following reasons, we affirm the circuit court’s detention order of October 18, 2023, in appeal 5-23-1049, and dismiss in part that portion of appeal 5-23-1190, as it relates to the October 18, 2023, detention order, vacate in part that portion of appeal 5-23-1190, as it relates to the circuit court’s order of November 9, 2023, and remand with directions.<sup>1</sup>

¶ 3

### I. BACKGROUND

¶ 4 On October 17, 2023, the defendant was charged with one count of armed habitual criminal in violation of section 24-1.7(a) of Criminal Code of 2012 (Criminal Code) (720 ILCS 5/24-1.7(a) (West 2022)), one count of armed violence in violation of section 33A-2(a) of the Criminal Code (*id.* § 33A-2(a)), and one count of unlawful possession with the intent to deliver a controlled substance in violation of section 401(a)(2)(C) of the Illinois Controlled Substances Act (720 ILCS 570/401(a)(2)(C) (West 2022)). On the same day, the State filed a verified petition to deny the defendant pretrial release. The circuit court conducted a hearing on October 18, 2023, granted the State’s motion, and ordered the defendant detained. The defendant filed a timely notice of appeal on October 31, 2023 (appeal 5-23-1049).

¶ 5 On November 6, 2023, the defendant filed a motion to reconsider the circuit court’s denial of pretrial release. The State filed a response to the defendant’s motion to reconsider on November 8, 2023, and after a hearing on November 9, 2023, the circuit court denied the defendant’s motion to reconsider. On November 15, 2023, the defendant filed a notice of appeal stating that he was

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<sup>1</sup>Pursuant to Illinois Supreme Court Rule 604(h)(5) (eff. Dec. 7, 2023), our decision in this case was due on or before March 6, 2024, absent a finding of good cause for extending the deadline. Based on the high volume of appeals under the Act currently under the court’s consideration, as well as the complexity of issues and the lack of precedential authority, we find there to be good cause for extending the deadline.

appealing the circuit court's orders of October 18, 2023, and November 9, 2023 (appeal 5-23-1190).

¶ 6 The State filed several motions to dismiss with regard to the pending appeals. In appeal 5-23-1049, the State's first motion to dismiss argues that the defendant's notice of appeal failed to comply with Illinois Supreme Court Rule 604(h)(2) (eff. Sept. 18, 2023), in that it failed to describe the grounds for the relief requested. In its second motion to dismiss, the State argues that the defendant failed to file an Illinois Supreme Court Rule 328 (eff. July 1, 2017) supporting record with this court within 30 days after filing his notice of appeal as required by Rule 604(h)(2)(i). Ill. S. Ct. R. 604(h)(2)(i) (eff. Sept. 18, 2023). The State argues that the defendant's Rule 328 supporting record was due on or before December 15, 2023, and that the defendant failed to file a motion for extension of time prior to December 15, 2023. The State notes that Rule 604(h)(2)(i) states that motions for extension of time are "disfavored and will only be granted by order of court for good cause shown." Ill. S. Ct. R. 604(h)(2)(i) (eff. Sept. 18, 2023). As such, the State argues that the defendant never made a showing of good cause and that this court should strictly apply the requirements of Rule 604(h) and dismiss the appeal for failure to comply with the rule.

¶ 7 The defendant filed an objection to the State's first motion to dismiss and a response to the State's second motion to dismiss. In its response to the State's second motion to dismiss, the defendant states that the Rule 328 supporting record was filed on December 26, 2023,<sup>2</sup> and that the defendant should not be penalized for the clerk of the circuit court's failure to timely file the Rule 328 record, especially in light of the numerous appeals currently being handled by the clerks of the circuit courts. We have reviewed both of the State's motions to dismiss in matter 5-23-1049, and the defendant's objection and response thereto, and elect to proceed to the merits of the appeal.

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<sup>2</sup>The supporting record in appeal 5-23-1049 was not filed until January 10, 2024.

Therefore, the State's motions to dismiss filed on December 27, 2023, and January 2, 2024, in appeal 5-23-1049, are denied.

¶ 8 The State also filed two motions to dismiss in appeal No. 5-23-1190. In its first motion to dismiss, the State again argues that the defendant's notice of appeal failed to comply with Rule 604(h)(2), in that it failed to describe the grounds for the relief requested. In its second motion to dismiss, the State argues that the defendant's notice of appeal, which indicated that the defendant was appealing the circuit court's orders of October 18, 2023, and November 9, 2023, was not timely filed with regard to the circuit court's order of October 18, 2023, and that Rule 604(h) does not allow for the review of an order denying a defendant's motion to reconsider. As such, the State argues that appeal No. 5-23-1190, should be dismissed for lack of jurisdiction.

¶ 9 The defendant filed an objection to the State's first motion to dismiss and a response to the State's second motion to dismiss. In his response to the second motion to dismiss, the defendant argues that, regardless of the title of the motion heard at a subsequent appearance by the defendant, it is a request for pretrial release and proper under section 110-6.1(i-5) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1(i-5) (West 2022)). Section 110-6.1(i-5) requires the circuit court to find, at each subsequent appearance of the defendant before the circuit court, that continued detention is necessary. *Id.* The defendant further argues that, once the circuit court determines that continued detention remains necessary and has entered an order denying pretrial release, that order is appealable pursuant to Rule 604(h). Ill. S. Ct. R. 604(h) (eff. Oct. 19, 2023). Both parties reassert their arguments presented with regard to the State's second motion to dismiss within their memorandums. As such, both motions to dismiss filed by the State in appeal 5-23-1190 are denied, and we will address the issue raised in the State's second motion to dismiss in our analysis below.

¶ 10

## II. ANALYSIS

¶ 11 This court has an independent duty to review our jurisdiction over an appeal and to dismiss the appeal when jurisdiction does not exist. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). We begin our jurisdictional analysis with appeal 5-23-1049. On October 18, 2023, the circuit court granted the State’s verified petition to deny pretrial release and ordered the defendant detained. The defendant filed a notice of appeal on October 31, 2023. Rule 604(h)(2) requires that a notice of appeal must be “filed in the circuit court within 14 days of the entry or denial of the order from which review is being sought.” Illinois Supreme Court Rule 606(a) states, “No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional.” Ill. S. Ct. R. 606(a) (eff. Oct. 19, 2023). Here, the defendant’s notice of appeal was filed 12 days after the entry of the circuit court’s detention order appealed and, thus, was timely filed. The notice of appeal also indicated the order appealed, the relief requested, and the issues raised on appeal. That is all that is required to provide this court with jurisdiction in appeal 5-23-1049. See *People v. Duckworth*, 2024 IL App (5th) 230911, ¶ 5.

¶ 12 We next consider our jurisdiction in appeal 5-23-1190. As stated above, a notice of appeal must be filed within 14 days of the entry or denial of the order from which review is being sought. In this appeal, the defendant’s notice of appeal was filed on November 15, 2023, and stated that the defendant was appealing the circuit court’s orders of October 18, 2023, and November 9, 2023. The notice of appeal was filed within 14 days of the circuit court’s order of November 9, 2023; it was not, however, filed within 14 days of the circuit court’s October 18, 2023, order.

¶ 13 The defendant cites to *People v. Triplett*, 2024 IL App (2d) 230388, in support of his argument that this court has jurisdiction over both orders in appeal 5-23-1190. In *Triplett*, the defendant was ordered detained on September 20, 2023, and the defendant did not appeal the

circuit court's detention order. Then, on October 2, 2023, the defendant orally moved for pretrial release, which the circuit court denied. On October 13, 2023, the defendant filed a notice of appeal challenging the circuit court's detention orders of September 20, 2023, and October 2, 2023. The State argued that the appellate court lacked jurisdiction to consider the September 20, 2023, findings of the circuit court since the notice of appeal was filed beyond the statutory time for filing. The *Triplett* court held that it could consider the circuit court's September 20, 2023, findings because the circuit court expressly relied on those findings when it ordered continued detention on October 2, 2023.

¶ 14 Based on *Triplett*, the defendant here now argues that this court should address both orders in appeal 5-23-1190, and find appeal 5-23-1049 moot. There is a difference between jurisdiction and what this court may consider upon review. As the *Triplett* court correctly determined, it was permitted to review the circuit court's findings of September 20, 2023, because a notice of appeal brings up for review unspecified orders and judgments that were a step in the procedural progression leading to the judgment or order specified in the notice of appeal. *People v. Jones*, 207 Ill. 2d 122, 138 (2003). Thus, the circuit court's detention order of September 20, 2023, was a step in the procedural progression leading to the denial of the defendant's oral motion for pretrial release on October 2, 2023, and the *Triplett* court could properly consider the findings upon review.

¶ 15 Here, however, the second order appealed was not a denial of pretrial release, but a denial of a motion for reconsideration. Illinois Supreme Court Rules 604(h) and 606(a) do not require the filing of a motion for reconsideration in order to perfect an appeal from an interlocutory order of the circuit court entered under sections 110-5, 110-6, and 110-6.1 of the Code (725 ILCS 5/110-5, 110-6, 110-6.1 (West 2022)). Ill. S. Ct. Rs. 604(h), 606(a) (eff. Sept. 18, 2023). There is also nothing within Rule 604(h) or 606(a) that prohibits the filing of a motion to reconsider. We further

note that “[a] court in a criminal case has inherent power to reconsider and correct its own rulings, even in the absence of a statute or rule granting it such authority. [Citations.] A court’s power to reconsider and correct its decisions extends to interlocutory, as well as final, judgments.” *People v. Mink*, 141 Ill. 2d 163, 171 (1990).

¶ 16 Rule 606(b) states that, except as provided in Rule 604(h), if a motion directed against the judgment is timely filed, the notice of appeal must be filed within 30 days after the entry of the order disposing of the motion. Ill. S. Ct. R. 606(b) (eff. Sept. 18, 2023). In a criminal case, the time for filing a motion directed against the judgment is within the time to appeal; generally, 30 days from the date of the order appealed. See *People v. Shunick*, 2022 IL App (4th) 220019, ¶ 15; *People v. Haldorson*, 395 Ill. App. 3d 980, 982 (2009). Rule 604(h)(2), however, reduces the time to appeal orders pursuant to sections 110-5, 110-6, and 110-6.1 of the Code to 14 days. Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023). The circuit court ordered the defendant detained on October 18, 2023. As such, the defendant’s motion for reconsideration was required to be filed no later than November 1, 2023. The defendant did not file his motion for reconsideration until November 6, 2023. As such, the defendant’s motion for reconsideration was untimely and should have been dismissed by the circuit court.

¶ 17 We note that the defendant argues on appeal that, regardless of the title of the motion, the circuit court’s order of November 9, 2023, was in substance, an order denying pretrial release under section 110-6.1(i-5). Section 110-6.1(i-5) of the Code requires the circuit court to find, at each subsequent appearance of the defendant before the circuit court, that continued detention was necessary to avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or to prevent the defendant’s willful flight from prosecution. 725 ILCS 110-6.1(i-5) (West 2022). We are not persuaded by this argument. The

defendant's motion for reconsideration specifically included a prayer of relief that the circuit court reconsider its October 18, 2023, order and enter an order releasing him from pretrial detention. Further, the report of proceedings regarding the circuit court's hearing on the defendant's motion on November 9, 2023, demonstrates that the matter was called on the motion for reconsideration, and that the defendant's counsel consistently referred to "my motion to reconsider." Further, and more importantly, the circuit court set forth the requirements for a motion for reconsideration stating as follows:

"This is a motion to reconsider, and my understanding of the law on motions to reconsider are—first off, they have to be timely filed, and this, I believe, was timely filed. But they're basically three different things that has to—one of the three things has to be alleged in the motion to reconsider, and that is newly discovered evidence, which must have been unknown at the time that the original argument was presented, and the newly discovered evidence—I think the only thing I've been told about that's new is his medical condition that I'm aware of."

¶ 18 It is clear from the report of proceedings that the circuit court heard arguments and considered the factors relevant to a motion for reconsideration, which is a different standard than that of continued detention under section 110-6.1(i-5). At no point in the proceedings did the defendant raise any issue with regard to section 110-6.1(i-5) nor did the circuit court make the specific findings required by section 110-6.1(i-5). As such, it is clear that the defendant has appealed the circuit court's ruling with regard to his motion for reconsideration and not an order finding that continued detention was necessary under section 110-6.1(i-5). Therefore, in appeal 5-23-1190, we lack jurisdiction with regard to the circuit court's order of October 18, 2023, due to the late filing of the notice of appeal, and dismiss that portion of the appeal. We further find that



the defendant's motion for reconsideration was untimely, and as such, we vacate the circuit court's November 9, 2023, order and remand with instructions that the circuit court dismiss the defendant's motion for reconsideration as untimely. See generally *People v. Bailey*, 2014 IL 115459, ¶ 29 (appellate court did not need to dismiss appeal, but should have vacated the circuit court's judgment and ordered that the defendant's motion be dismissed).

¶ 19 We now address appeal 5-23-1049, which this court has jurisdiction to hear. Under the Code, a defendant's pretrial release may only be denied in certain statutorily limited situations. See 725 ILCS 5/110-2(a), 110-6.1 (West 2022). After filing a timely verified petition requesting denial of pretrial release, the State has the burden to prove by clear and convincing evidence (1) that the proof is evident or the presumption great that the defendant has committed a qualifying offense, (2) that the defendant's pretrial release poses a real and present threat to the safety of any person or the community or a flight risk, and (3) that less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. *Id.* § 110-6.1(e), (f). The circuit court may order a defendant detained pending trial if the defendant is charged with a qualifying offense, and the circuit court concludes that the defendant poses a real and present threat to the safety of any person or the community (*id.* § 110-6.1(a)(1)-(7)), or there is a high likelihood of willful flight to avoid prosecution (*id.* § 110-6.1(a)(8)).

¶ 20 The statute provides a nonexclusive list of factors that the circuit court may consider in making a determination of "dangerousness," *i.e.*, that the defendant poses a real and present threat to any person or the community. *Id.* § 110-6.1(g). In making a determination of dangerousness, the circuit court may consider evidence or testimony as to factors that include, but are not limited to (1) the nature and circumstances of any offense charged, including whether the offense is a

crime of violence involving a weapon or a sex offense; (2) the history and characteristics of the defendant; (3) the identity of any person to whom the defendant is believed to pose a threat and the nature of the threat; (4) any statements made by or attributed to the defendant, together with the circumstances surrounding the statements; (5) the age and physical condition of the defendant; (6) the age and physical condition of the victim or complaining witness; (7) whether the defendant is known to possess or have access to a weapon; (8) whether at the time of the current offense or any other offense, the defendant was on probation, parole, or supervised release from custody; and (9) any other factors including those listed in section 110-5 of the Code (*id.* § 110-5). *Id.* § 110-6.1(g).

¶ 21 If the circuit court finds that the State proved a valid threat to a person’s safety or the community’s safety and/or the defendant’s likely willful flight to avoid prosecution, or the defendant’s failure to abide by previously issued conditions of pretrial release, then the circuit court must determine what pretrial release conditions, “if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release.” *Id.* § 110-5(a). In reaching its determination, the circuit court must consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; (4) the nature and seriousness of the specific, real, and present threat to any person that would be posed by the defendant’s release; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. *Id.* The statute lists no singular factor as dispositive, but provides that no single factor or standard may be used exclusively to order detention. *Id.* § 110-6.1(f)(7). If the circuit court determines that the

defendant should be denied pretrial release, the circuit court is required to make written findings summarizing the reasons for denying pretrial release. *Id.* § 110-6.1(h)(1).

¶ 22 Our standard of review of pretrial release determinations is twofold. The circuit court’s factual findings will be reviewed under the manifest weight of the evidence standard. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). “Under the manifest weight standard, we give deference to the [circuit] court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses.” *Id.* The circuit court’s ultimate determination regarding pretrial release, however, will not be reversed absent an abuse of discretion. *People v. Swan*, 2023 IL App (5th) 230766, ¶ 11. An abuse of discretion occurs when the decision of the circuit court is arbitrary, fanciful, or unreasonable, or when no reasonable person would agree with the position adopted by the circuit court. *Id.*

¶ 23 On October 31, 2023, the defendant timely appealed utilizing the Notice of Pretrial Fairness Act Appeal 604(h) (Defendant as Appellant) standardized form provided by the Illinois Supreme Court. Ill. S. Ct. R. 604(h)(2) (eff. Oct. 19, 2023). Utilizing the notice of appeal form approved for Rule 604(h) appeals, the defendant requests “[t]hat the Order for Detention of October 18, 2023, be vacated,” as relief. The defendant’s claims of error consist of four checked boxes on the six-page form, asserting (1) “[t]he State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offense(s) charged”; (2) “[t]he State failed to meet its burden of proving by clear and convincing evidence that defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific, articulable facts of the case”; (3) “[t]he State failed to meet its

burden of proving by clear and convincing evidence that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons or community, based on the specific, articulable facts of the case, or defendant's willful flight"; and (4) "[t]he court erred in its determination that no condition or combination of conditions would reasonably ensure the appearance of defendant for later hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor." On the additional space provided for elaboration on each of the contentions, the defendant failed to make any specific argument whatsoever in support of his claims.

¶ 24 The Office of the State Appellate Defender was appointed to represent the defendant in this appeal and did not file a memorandum or a notice "In Lieu of Rule 604(h) Memorandum." We note that under Illinois Supreme Court Rule 604(h)(2) (eff. Dec. 7, 2023), a supporting memorandum is not required. The State filed a memorandum arguing that the circuit court's denial of pretrial release was a reasonable exercise of its discretion and that the evidence presented supported the circuit court's finding that the defendant committed a qualifying offense, that the defendant posed a real and present threat to the safety of the community, and that no condition or combination of conditions could mitigate the threat posed by the defendant's release.

¶ 25 As stated above, the defendant presents no specific argument regarding the circuit court's findings. We have thoroughly reviewed the record on appeal in this matter. The circuit court made an individualized finding to deny the defendant pretrial release after considering the facts presented, the pretrial investigation report, arguments made by counsel, and the statutory factors. The circuit court found that the defendant committed a detainable offense, posed a real and present threat to the community, and that no conditions of pretrial release could mitigate the threat.

¶ 26 Based on our review of the record, we find that the circuit court’s factual findings were not against the manifest weight of the evidence and the circuit court’s ultimate determination to deny the defendant pretrial release was not an abuse of discretion. Accordingly, we affirm the circuit court’s detention order of October 18, 2023, in appeal 5-23-1049.

¶ 27 III. CONCLUSION

¶ 28 For the foregoing reasons, we affirm the Jefferson County’s circuit court’s October 18, 2023, detention order in appeal 5-23-1049. We dismiss that part of the defendant’s 5-23-1190 appeal for lack of jurisdiction with regard to the circuit court’s order of October 18, 2023, due to the late filing of the notice of appeal, and we vacate the circuit court’s November 9, 2023, order, and remand with instructions that the circuit court dismiss the defendant’s motion for reconsideration as untimely.

¶ 29 No. 5-23-1049, Affirmed.

¶ 30 No. 5-23-1190, Dismissed in part, vacated in part, and remanded with directions.