

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).

2023 IL App (4th) 230845-U

NO. 4-23-0845

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 14, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Cass County
RUSSELL J. LUCAS JR.,)	No. 23CF38
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Wessel,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justice Steigmann concurred in the judgment.
Justice Turner specially concurred.

ORDER

¶ 1 *Held:* Defendant failed to prove the circuit court erred in denying his pretrial release.

¶ 2 Defendant, Russell Lucas Jr., appeals the circuit court’s order denying his pretrial release under article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023) commonly known as the Safety, Accountability, Fairness and Equity-Today Act (Act). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248,

¶ 52 (setting the Act’s effective date as September 18, 2023). Defendant asserts one argument on appeal: this court should reverse the denial of pretrial release as he was denied the effective assistance of counsel when defense counsel failed to move to strike the State’s petition to deny pretrial release as untimely. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On August 18, 2023, defendant was charged with criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2022)), attempt criminal sexual assault (*id.* §§ 8-4(a), 11-1.20(a)(3)), domestic battery (*id.* § 12-3.2(a)(2)), obstructing justice (*id.* § 31-4(a)(1)), and unlawful possession of methamphetamine (720 ILCS 646/60(a), (b)(1) (West 2022)). According to the charges, defendant, in “about July 2022,” committed an act of sexual penetration against a victim under the age of 18 and attempted to do so against the same victim on July 2, 2023. Also, on July 2, 2023, defendant is alleged to have struck the same victim in her face and taken her cell phone with the intent to conceal evidence of sexual abuse. The drug offense allegedly occurred in August 2023.

¶ 5 The record shows defendant first appeared before the circuit court on August 21, 2023. At that appearance, the State recommended bond remain at \$400,000 (10% to apply), and the court agreed. Defendant was granted time to hire counsel. The cause was continued for first appearance with counsel.

¶ 6 On August 28, 2023, defendant appeared *pro se*, and the circuit court appointed the public defender as counsel. The cause was continued for first appearance with counsel.

¶ 7 On September 6, 2023, defendant filed a motion to reduce bond to \$100,000 (10% to apply). In his motion, defendant averred he assisted in the care of his father, who is disabled and cannot drive, by providing transportation for his father’s medical and physical needs, and in the care of his mother-in-law, who is an amputee. Defendant asserted he was a resident of Cass County and not a flight risk. Defendant challenged the veracity of the victim’s statement, asserting she had made similar statements in the past and recanted those statements.

¶ 8 The following day, the State moved to increase bail and modify bond conditions.

The State asserted defendant was a great flight risk. The State reported defendant twice attempted to avoid arrest. On August 15, 2023, when police attempted to serve a warrant, defendant hid in the attic and refused to present himself. On the day of his arrest, he attempted to escape through a window.

¶ 9 In its motion, the State further emphasized a number of facts learned from conversations defendant had on a recorded line. Defendant admitted to his attempt to flee. Defendant also asked his mother to pass him methamphetamine while at the courthouse for his August 28 appearance, and defendant's mother admitted she brought a capsule of methamphetamine but was unable to deliver it to him. Regarding the victim living in St. Louis, Missouri, defendant admitted he planned on “ ‘doing business in St. Louis,’ ” which the State believed posed a real and present threat to the victim's safety. Moreover, defendant attempted to obstruct justice by asking potential witnesses “to wipe, or delete, information and evidence from their cellular phones.”

¶ 10 On September 11, 2023, the circuit court held a brief hearing on the parties' motions but did not rule on those motions. At this hearing, the court announced it would set the matter for a detention hearing on September 18, 2023, and defense counsel agreed:

“THE COURT: Thinking I'm not going to do a trial by fire here because I don't think that's fair to [defendant] or anything I'm going to set this for a detention hearing next Monday at 11 a.m. with a law changing on Monday anyway we have to have a detention hearing to determine anyways.

[DEFENSE COUNSEL]: Correct.

THE COURT: So I'm going to set this for a detention

hearing next Monday at 11 a.m. *** So [defendant,] we're going to hear your motion to reduce your bond and also the State's motion to increase bond. Frankly the law changes on Monday anyway—next Monday so either you'll be released with services or you'll be detained. There is no cash bond starting Monday.”

¶ 11 On September 12, 2023, the State filed a verified petition to deny defendant pretrial release. The petition does not appear in the record.

¶ 12 On September 18, 2023, the detention hearing began. The circuit court announced defendant was entitled to a hearing within 48 hours of the Act's “enactment.” Because of a technical failure, defense counsel was unable to open a link to a “very large file.” The court offered defense counsel the option to proceed or continue the matter until two days later. Defense counsel elected the continuance.

¶ 13 At the hearing on September 20, 2023, the State called one witness in support of its verified petition to detain defendant: Sergio Rodriguez, a special agent with the Illinois State Police. Rodriguez testified, based on his recollection of a Cass County deputy's report, the victim reported defendant used force, such as a credit card or other device, to get into her room. Defendant attempted to sexually assault her by lying on her and moving her legs. After this attempt, the victim went to report the events to her grandmother. At this time, defendant took the phone from either the grandmother or the victim and a scuffle ensued. Defendant struck the victim's head, causing a contusion. He left the residence. Rodriguez interviewed the victim, and she disclosed the information about the attempted sexual assault, including that she had repeatedly told him no. The victim revealed other incidents of criminal sexual assaults conducted by defendant when the victim was a juvenile, including events when she was nine years old.

Rodriguez described the July 2022 sexual assault and testified defendant admitted, during an “overhear,” to having intercourse with the victim in July 2022, when she was under age 17.

¶ 14 Rodriguez provided further testimony regarding defendant’s behavior. In addition to providing testimony supporting the methamphetamine charge and the obstructing-justice charge, Rodriguez testified, based on his interpretation of conversations between defendant and the victim, defendant attempted to bribe the victim with \$18,000 in gold or silver coins.

Rodriguez further learned, by listening to recorded conversations, the victim recanted statements made in Morgan County regarding defendant sexually assaulting her because “she didn’t want to be homeless.”

¶ 15 At the conclusion of the hearing, the circuit court ordered defendant detained. The court found clear and convincing evidence defendant committed a detention eligible felony under the Act. The court, highlighting defendant’s attempts to flee from arrest, found the State proved “willful flight” by clear and convincing evidence. The court further found defendant posed a real and present threat to the victim’s safety. The court found no condition or combination of conditions could mitigate defendant’s “willful flight” or “dangerousness.”

¶ 16 This appeal followed.

¶ 17 **II. ANALYSIS**

¶ 18 On appeal, defendant makes just one challenge to the circuit court’s pretrial-detention order: “[T]he State’s petition to deny pretrial release was untimely, and defense counsel was both constitutionally ineffective and statutorily unreasonable in explicitly waiving any objection to untimeliness.” Defendant argues, under section 110-6.1(c) of the Code (720 ILCS 5/110-6.1(c) (West 2022)), a State’s verified petition to deny pretrial release may be filed only at the first appearance or within 21 calendar days after his arrest. Defendant

emphasizes he first appeared on August 21, 2023, and the verified petition was not filed until September 12, 2023—one day too late. Because, defendant contends, the State’s petition was late, his counsel should have moved to strike the State’s petition and the failure to do so denied him the effective assistance of counsel.

¶ 19 This court, in *People v. Jones*, 2023 IL App (4th) 230837, ¶ 17, expressly rejected the position defendant takes here. This court held the State need not file “all its petitions within 21 days of a case’s commencement.” *Id.* We found,

“[f]or defendants arrested and detained before the Act’s effective date who remained in detention after being granted pretrial release on the condition that they pay monetary bail, a motion to deny pretrial release following the Act’s implementation operates as a motion to increase the pretrial release conditions to the furthest extent.” *Id.*

¶ 20 Applying *Jones*, we find the State’s petition was not untimely. The petition acted “as a motion to increase the pretrial release conditions to the furthest extent” (*id.*), which we note is similar to the petition the State filed after defendant sought a reduction in bond. Defense counsel, therefore, would not have succeeded in moving to strike the State’s petition as untimely, and defendant cannot prove his ineffective-assistance-of-counsel claim. See generally *People v. Easley*, 192 Ill. 2d 307, 329, 736 N.E.2d 975, 991 (2000) (“[I]t is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit.”).

¶ 21 III. CONCLUSION

¶ 22 We affirm the circuit court’s judgment.

¶ 23 Affirmed.

¶ 24 JUSTICE TURNER, specially concurring:

¶ 25 I agree we should affirm the circuit court’s judgment, but I do not agree with the majority’s analysis. The majority relies upon *Jones*, which I believe is analytically flawed for multiple reasons, some of which I set forth in my special concurrence in *Jones*. See *Jones*, 2023 IL App (4th) 230837, ¶ 38 (Turner, J., specially concurring). Here, citing *Jones*, the majority concludes the State’s petition acted “ ‘as a motion to increase the pretrial release conditions to the furthest extent.’ ” *Supra* ¶¶ 19-20 (quoting *Jones*, 2023 IL App (4th) 230837, ¶ 17). The majority highlights the part of the *Jones* decision citing section 110-6(g) of the Code (725 ILCS 5/110-6(g) (West 2022)), as amended by the Act, which allows a court to add or increase conditions of pretrial release. See *supra* ¶¶ 19-20 (citing *Jones*, 2023 IL App (4th) 230837, ¶ 17). The *Jones* court erroneously concluded this provision, taken to the “furthest extent,” permits detention. *Jones*, 2023 IL App (4th) 230837, ¶ 17. However, section 110-6(g) has nothing to do with detention but instead pertains to conditions of pretrial release and is inapplicable here.

¶ 26 In the case *sub judice*, the State filed a verified petition under section 110-6.1 (725 ILCS 5/110-6.1 (West 2022)) without defendant having first filed a petition for release. Section 110-7.5 of the Code (725 ILCS 5/110-7.5 (West 2022)) does not provide for the State to initiate a detention proceeding by filing a verified petition unless the defendant has posted security under section 110-7.5(a). Nonetheless, defendant had filed a motion to reduce his bond prior to the effective date of the Act. If defense counsel had successfully reduced defendant’s bond to an amount defendant could post, the State could then have filed a verified petition for detention pursuant to section 110-7.5(a). Accordingly, I do not find defense counsel was ineffective under these unique circumstances because the State would have ultimately been able to proceed on a hearing to deny pretrial release due to defendant being charged with a detainable

offense listed in section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)).