2024 IL App (1st) 232476-U

No. 1-23-2476B

Order filed March 29, 2024

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of Cook County.
	)	
v.	)	No. 17 CR 11188
	)	
JEFFERY FREEMAN,	)	Honorable
	)	Steven G. Watkins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Presiding Justice Mitchell and Justice Lyle concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse the circuit court's order granting the State's petition for pretrial detention and remand for further proceedings.

¶ 2 Defendant, Jeffery Freeman, appeals from the circuit court's December 12, 2023, order, denying his pretrial release under section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)), as amended by Public Act 101-652 (eff. Jan. 1, 2023) and commonly known as the Pretrial Fairness Act (Act). The Act, which became effective September 18, 2023, abolished the requirement of posting monetary bail and "created a process for determining when pretrial release is improper." *People v. Whitmore*, 2023 IL App (1st) 231807, ¶¶ 2-3 (citing 725 ILCS 5/110-5) (West Supp. 2023).

¶ 3 Freeman contends that the circuit court erred in denying his pretrial release and ordering detention because the State's petition to detain was untimely under section 110-6.1(c) of the Code (725 ILCS 5/110-6.1(c) (West 2022)). He also argues that the circuit court did not comply with the Act because it failed to support its detention decision with factual findings and applied a *per se* rule to detain based on the type of the offense.

¶ 4 I. BACKGROUND

¶ 5 On June 28, 2017, Freeman was arrested and charged with first degree murder for a shooting that occurred in October 2014 and resulted in the victim's death. After a bond hearing, a court set his bond at $1,000,000. Freeman was unable to pay bond and has remained in custody since his arrest. As previously noted, the Act became effective on September 18, 2023. See *Rowe v. Raoul*, 2023 IL 129248, ¶ 52.

¶ 6 On November 6, 2023, when the case was before the court on another pretrial motion, defense counsel informed the court that Freeman was "seeking to file a petition to have a bond review" under the Act and was "asking for a date on that motion." The court granted Freeman leave to file the petition and then passed the case. When the case came before the court again that same day, the case was continued by agreement of the parties to November 30, 2023.

¶ 7 Freeman filed on November 6, 2023, a petition to remove a financial condition of pretrial release, in which he asserted that under section 110-5(e) of the Code (725 ILCS 5/110-5(e) (West 2022)), the court was required to determine a reason for his continued detention and the "failure to pay for a condition of release" could not be the basis for his detention. He argued that the State could not prove that the proof was evident or the presumption great that he committed the offense, that he posed a real and present threat to the safety of any person or

persons in the community, and that there was no condition or combination of conditions that could mitigate the real and present threat.

¶ 8 The transcript from the November 30, 2023, court date is not contained in the record. The next court date included in the record is December 12, 2023.

¶ 9 At the December 12, 2023, court date, the State informed the court that it had filed a petition to detain on that date. The parties then proceeded to argument.

¶ 10 The State argued that the proof was evident and the presumption great that Freeman committed the offense of first degree murder, a detention-eligible offense under the Act, and that he posed a real and present threat to the safety of any person or persons in the community based on the facts of the case. The State proffered the following facts. Before the shooting, Freeman and multiple other people were socializing in an alley when one person exited a vehicle and instructed Freeman and another person to "check the victim." Freeman was handed a gun, after which he walked through the alley towards the parked vehicle in which the victim was sitting. Freeman, who was smoking a cigarette, then approached the victim's vehicle and shot five to six times into the vehicle, striking the victim multiple times. Freeman ran through the alley and got into a vehicle. The individual who was inside the victim's vehicle fled from the vehicle during the shooting and gave a description of the shooter that was consistent with another individual who testified at the grand jury proceeding.

¶ 11 The State further proffered that, although the video surveillance did not show the face of the offender, the video showed Freeman as the shooter. Cigarettes were recovered from the location of the shooting, near where the victim's vehicle had been parked. DNA recovered on one of the cigarette's matched Freeman's DNA. At the grand jury proceeding, a witness identified Freeman as the shooter and the video surveillance corroborated his testimony.

¶ 12 The State also proffered that in 2015, Freeman had a conviction for a "gun offense" and two convictions for possession of a controlled substance, and that in 2014 he had a misdemeanor for criminal trespass to real property.

¶ 13 In response, defense counsel argued that the State did not meet its burden of proving by clear and convincing evidence that the proof was evident or the presumption great that Freeman committed the offense. Counsel stated that the shooting occurred in 2014, and Freeman was not arrested until June 2017. Counsel told the court that the State proffered three pieces of circumstantial evidence, including the DNA on the cigarette, the video surveillance, and the eyewitness. Counsel stated that Freeman lived in the area where the cigarette was found, and the surveillance video did not identify anyone. As for the eyewitness, counsel stated that in February 2017, while the witness was under arrest for attempted first degree murder, the police asked him about the shooting, and he denied being at the scene of the incident. Counsel stated that one week later, the witness "changed his entire story" and testified at the grand jury proceeding that Freeman committed the offense.

¶ 14 Counsel also argued that at the initial bond hearing, the court denied the State's no-bail petition and that nothing new had been added since his arrest. Counsel argued that Freeman did not pose any danger to a specific person or the community and did not have a violent background. Counsel asserted that from the date the offense occurred in 2014 to his arrest in 2017, he had "some possession charges" and "possessed a gun" but was never violent or a danger to the community. Counsel informed the court that before Freeman's arrest, he was working two jobs. Counsel also stated that electronic home monitoring was one of the many conditions that could mitigate any risk and that Freeman had two eligible addresses.

¶ 15 In response, the State asserted that Freeman had filed the motion to remove a financial condition of pretrial release on November 6, 2023, and that on that date, Freeman "requested the date of November 30th by agreement for our filing and the petition for detention hearing." The State asserted that, "[o]n November 30th we indicated that we were not ready on that date. It again went by agreement till [*sic*] today. If the defendant wished to be heard within that time they could have requested to be heard. Instead they went by agreement."

¶ 16 Following argument, the court granted the State's petition. The court stated that it found that the State had proven by clear and convincing evidence that the "proof is evident and the presumption is great that this defendant did commit the offense of murder as charged and proffered." It further stated that Freeman "poses a real and present threat to the safety and the—of the community at large and no less restrictive conditions of the defendant's release can mitigate the real and present threat by this defendant." On the same day, the court issued a written order on a form order entitled "order after pretrial detention hearing," in which it indicated that it found that the proof was evident or the presumption great that Freeman committed the eligible offense of murder and that he posed a real and present threat to the safety of the community.

¶ 17 II. ANALYSIS

¶ 18 Freeman contends that the State's petition was untimely under section 110-6.1(c) of the Code and that therefore the circuit court did not have authority to entertain the State's untimely petition. Section 110-6.1(c)(1) of the Code provides that,

> "A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant; provided that

while such petition is pending before the court, the defendant if previously released shall not be detained." 725 ILCS 5/110-6.1(c)(1) (West 2022).

¶ 19 Freeman argues that the State did not file its petition to detain at the first appearance before a judge, which was June 29, 2017, as it filed it six years later on December 12, 2023. Freeman argues that under any interpretation of section 110-6.1(c) of the Code, the State's petition was untimely because the State did not file its petition at the first hearing after the September 18, 2023, effective date of the Act. According to Freeman, the first hearing after the effective date "was, at the latest, November 6, 2023." He also asserts that the State's petition was filed more than 21 days after the September 18, 2023, effective date and after the November 6, 2023, date on which he filed his petition to remove a financial condition of pretrial release. In response, the State argues that its petition was timely under this court's decision and interpretation of section 110-6.1(c) of the Code set forth in *People v. Haisley*, 2024 IL App (1st) 232163.

¶ 20 As previously stated, "[t]he Act amended the Code by abolishing traditional monetary bail in favor of pretrial release on personal recognizance or with conditions of release." *People v. Lee*, 2024 IL App (1st) 232137, ¶ 17 (citing 725 ILCS 5/110-1.5, 110-2(a) (West 2022)). Under the Code, as amended, "[a]ll defendants shall be presumed eligible for pretrial release." 725 ILCS 5/110-6.1(e) (West 2022). "[A] defendant's pretrial release may only be denied in certain statutorily limited situations." *People v. Forthenberry*, 2024 IL App (5th) 231002, ¶ 18. We review a circuit court's detention decision for abuse of discretion. *People v. Wells*, 2024 IL App (1st) 232453, ¶ 16. "[T]o the extent our consideration involves the Act's construction, our review is *de novo*." *People v. Davidson*, 2023 IL App (2d) 230344, ¶ 15.

¶ 21 A defendant who was arrested before the effective date of the Act, September 18, 2023, and who remains in custody "after having been ordered released with conditions, including the posting of monetary security," as here, may choose to either "remain in detention until the previously set monetary security may be paid" or "file a motion to modify the previously set conditions of pretrial release under sections 110-7.5(b) and 110-5(e) of the Code." *Forthenberry*, 2024 IL App (5th) 231002, ¶ 26. In *Haisley*, 2024 IL App (1st) 232163, ¶ 19, this court explained that Illinois courts have reached inconsistent decisions on "whether a defendant's request to reopen the conditions of pretrial release triggers a new opportunity for the State to file a detention petition that would otherwise be untimely." (citing 725 ILCS 5/110-6.1(c)(1) and explaining that it requires the State to file petition to detain " 'at the first appearance before a judge' or within the 21 calendar days *** after arrest and release of the defendant' "). We agree with the decisions that have concluded that when a defendant requests to reopen the conditions of pretrial release under section 110-7.5, the State is not barred from filing a petition to detain in response. See *id.* ¶¶ 18-20.

¶ 22 Here, Freeman was arrested in 2017, which was before the September 18, 2023, effective date of the Act, and he has been in custody since that time. The record is not clear on what date Freeman first appeared before a judge after the effective date of the Act. However, the record shows that on November 6, 2023, Freeman filed a motion to remove a financial condition of pretrial release. By filing the motion, Freeman initiated proceedings under the amended statute. See *People v. McDonald*, 2024 IL App (1st), 232414-U, ¶ 22 (stating that the defendant "initiated the proceedings by filing his petition for pretrial release" and the filing of his petition "opened the door to proceedings dictated by the amended statute, including the State's ability to file a pretrial detention petition in response"); see also Ill S. Ct. R. 23(e)(1) (eff. Feb. 1, 2023)

(providing that unpublished Rule 23 orders filed on, or after, January 1, 2021, "may be cited for persuasive purposes"). The State was then permitted to file a petition to detain in response requesting the court to deny his release. See *Davidson,* 2023 IL App (2d) 230344, ¶ 18 (concluding that the defendant's motion to remove the monetary condition from his pretrial release, "in turn, triggered consideration of defendant's pretrial release conditions under the Code *as amended by the Act*, under which, on the State's petition, the court could deny defendant's release altogether") (Emphasis in original.); *Forthenberry*, 2024 IL App (5th) 231002, ¶ 27 ("[T]he State is permitted to file a responsive pleading in a situation such as this where a defendant was arrested and detained on a cash bond prior to the implementation of the Act and subsequently filed a motion seeking to modify the conditions of his pretrial release.").

¶ 23 The record before us shows that on November 6, 2023, Freeman's motion was continued to November 30, 2023. The record does not contain a copy of the November 30, 2023, court date. Freeman, as the appellant, has the burden of providing a sufficiently complete record, and we will resolve any doubts against him. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error" and "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant"). The next court date included in the record is the December 12, 2023, date, at which time the assistant state's attorney informed the court that, "[o]n November 30th we indicated that we were not ready on that date. It again went by agreement till today." Accordingly, the record shows that the hearing on Freeman's motion was continued by agreement to December 12, 2023, the date the State filed its petition. As previously noted, once Freeman filed the motion to remove a financial condition of his pretrial release, the State was allowed to file a petition to detain in response, and the court could properly consider

Freeman's motion and the State's petition together at the December 12, 2023, hearing. See *People v. Cottrell*, 2024 IL App (1st) 231891-U, ¶ 22 ("once [the defendant] moved to remove the financial conditions of his pretrial release, the State was permitted to file a responsive petition to detain [the defendant] and the court did not err in simultaneously considering both the motion and the petitions at a hearing").

¶ 24 Freeman contends that under section 110-6.1(c) of the Code, the State's petition was untimely. As previously stated, section 110-6.1(c) provides that, "[a] petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days *** after arrest and release of the defendant upon reasonable notice to defendant ***." 725 ILCS 5/110-6.1(c) (West 2022).

¶ 25 In *Haisley*, 2024 IL App (1st) 232163, ¶ 21, this court concluded that under section 110-6.1(c), the State is authorized "to file a detention petition without notice at the initial appearance" and "[i]f the State does not file a detention petition at the initial appearance, then it can still file one, subject to reasonable notice, up to 21 days after the defendant is released from custody." Here, Freeman has not been released from custody, so the time for the State to file a petition upon reasonable notice had not started to run. See *id.* ¶ 22 (stating that the defendant had not been released from custody, "which means the time for the State to file a petition upon reasonable notice had not yet run"). The State's petition therefore was timely under section 110-6.1(c) of the Code.

¶ 26 Accordingly, by filing the motion to remove a financial condition of pretrial release, Freeman initiated the proceedings under the amended statute, and the State was allowed to file a petition to detain in response. The court had authority to consider the State's petition.

¶ 27 Trial Court's Findings

¶ 28 Freeman next contends that the court erred in denying his release and ordering detention because the court provided no reasoning for its findings that Freeman posed a safety risk if released and that no condition or combination of conditions would be adequate to protect the community. In response, the State concedes that the court made inadequate findings with respect to its ruling that no less restrictive conditions could be imposed to protect the public. We agree.

¶ 29 It is the State's burden to prove by clear and convincing evidence that the court should deny a defendant pretrial release. 725 ILCS 5/110-6.1(e) (West 2022). To do so, the State must prove that: (1) the "proof is evident or the presumption great" that the defendant committed a detainable offense; (2) the 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"; and (3) "no condition or combination of conditions *** can mitigate (i) the 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 (ii) the defendant's willful flight." 725 ILCS 5/110-6.1(e)(1)-(3) (West 2022); see *Cottrell*, 2024 IL App (1st) 231891-U, ¶ 24.

¶ 30 The Act provides that, in the detention order, the court,

> "shall make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not 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 prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(h)(1) (West 2022).

We review the circuit court's pretrial release decision for an abuse of discretion. *People v. Davis*, 2023 IL App (1st) 231856, ¶ 17. "The failure to exercise discretion is abuse of discretion." *People v. Johnson*, 2024 IL App (1st) 240004-U, ¶ 18.

¶ 31 Here, we find that the court abused its discretion because it did not make sufficient written findings as required under section 110-6.1(h)(1) of the Code. In the court's written order regarding whether the State proved that Freeman posed a real and present threat to the safety of any person or the community, it states, "[h]e shot the victim which resulted in victim's death." In determining whether a defendant poses a real and present threat, the court may consider the nature and circumstances of the offense charged, including whether it is a crime of violence. 725 ILCS 5/110-6.1(g)(1) (West 2022). However, here, the court simply recited the offense charged and did not explain the nature and circumstances of the offense and why that poses a threat to the safety of the community. See *People v. Atterberry*, 2023 IL App (4th) 231028, ¶ 18 ("the fact that a person is charged with a detainable offense is not enough to order detention, nor is it enough that the defendant poses a threat to public safety"). Likewise, in the court's written order regarding why less restrictive conditions could not mitigate any real and present threat, it states, "[h]e shot & killed the victim." This does not explain why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community if he was released. See *People v. Stock*, 2023 IL App (1st) 231753, ¶ 20 (where the circuit court wrote in the blank space on the form order that, "The defendant shot a firearm at the complaining witness," this court found that this was insufficient to explain " why less restrictive means would be insufficient to mitigate any threat").

¶ 32 We note that "in assessing the sufficiency of a trial court's findings, its written findings must be read in conjunction with its oral pronouncements" *People v. Andino-Acosta*,

2024 IL App (2d) 230463, ¶ 19. A court's oral ruling, if transcribed in a transcript of proceedings, "may suffice, by itself, to satisfy the written-findings requirement as long as the oral findings are explicit and individualized." *People v. Vance*, 2024 IL App (1st) 232503, ¶ 29. However, the circuit court here did not make any explicit oral findings. Rather, the court concluded generally that the State proved that he "poses a real and present threat to the safety *** of the community at large and no less restrictive conditions of the defendant's release can mitigate the real and present threat by this defendant."

¶ 33 Accordingly, we find that the circuit court abused its discretion, and we remand to the circuit court to hold a hearing to determine whether Freeman poses a threat to the safety of any person or community and to explain why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community. See *Johnson*, 2024 IL App (1st) 240004-U, ¶ 28. We will not state an opinion on what conditions of pretrial release, if any, the circuit court should or should not impose, as that is a decision left to the circuit court's discretion. See *Stock*, 2023 IL App (1st) 231753, ¶ 22 (remanding to the circuit court, noting that "we express no opinion about what conditions of pretrial release should or should not be imposed upon defendant and leave that to the discretion of the trial court").

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we reverse the circuit court's judgment and remand for further proceedings.

¶ 36 Reversed and Remanded.