

NOTICE
Decision filed 12/29/23. 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.

2023 IL App (5th) 230893-U
NOS. 5-23-0893, 5-23-0894 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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	Nos. 22-CF-1576, 23-CF-443
)	
CORTEZ L. BOLDEN,)	Honorable
)	Robert B. Haida,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Moore and Boie concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) We reverse the circuit court’s detention order in Case No. 22-CF-1576 where the State failed to meet its required burden of proof because it failed to present any evidence.

- ¶ 2 (2) We affirm the circuit court’s detention order in Case No. 23-CF-443 where the State’s filing of a verified petition to detain in response to defendant’s motion to modify conditions of pretrial release did not constitute plain error, counsel was not ineffective for failing to move to strike the State’s petition to detain, and defendant forfeited review of any other potential issues.

- ¶ 3 Defendant, Cortez L. Bolden, appeals the St. Clair County circuit court’s September 27, 2023, orders in Case Nos. 22-CF-1576 (Appeal No. 5-23-0894) and 23-CF-443 (Appeal No. 5-23-0893) denying him pretrial release pursuant to Public Act 101-652, § 10-255 (eff. Jan. 1, 2023),

commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act (Act),¹ which amended article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Code); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). In Appeal No. 5-23-0894, defendant argues that the State failed to prove, by clear and convincing evidence, that he was eligible for detention in this case where the State did not file a proper petition to detain, did not show that he committed any qualifying offenses, and did not allege any specific articulable facts about this case. In Appeal No. 5-23-0893, defendant argues that the circuit court erred when it granted the State’s petition to detain because the Act does not allow the State to file a verified petition to deny pretrial release for defendants who remain in custody after having been ordered released on the condition of depositing security. Alternatively, defendant argues that counsel was ineffective for failing to move to strike the State’s verified petition. For the following reasons, we reverse the circuit court’s detention order in Case No. 22-CF-1576 (Appeal No. 5-23-0894), and we affirm the court’s detention order in Case No. 23-CF-443 (Appeal No. 5-23-0893).²

¶ 4

I. BACKGROUND

¶ 5 On October 14, 2022, the State charged defendant by information in Case No. 22-CF-1576 with one count of unlawful possession of a stolen motor vehicle, a Class 2 felony (625 ILCS 5/4-103(b) (West 2022)), one count of unlawful possession of a controlled substance, a Class 4 felony

¹“The Act has also sometimes been referred to in the press as the Pretrial Fairness Act. Neither name is official, as neither appears in the Illinois Compiled Statutes or public act.” *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1.

²Pursuant to Illinois Supreme Court Rule 604(h)(5) (eff. Dec. 7, 2023), our decisions in these cases were due on or before December 21, 2023, and December 22, 2023, 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.

(720 ILCS 570/402(c) (West 2022)), and one count of aggravated fleeing or attempting to elude a peace officer, a Class 4 felony (625 ILCS 5/11-204.1(b) (West 2022)). Also, on October 14, 2022, the circuit court set defendant's bond at \$10,000, requiring a deposit of 10%. Shortly thereafter, defendant posted bond and was released from custody. The court subsequently appointed the public defender to represent defendant in Case No. 22-CF-1576.

¶ 6 On March 15, 2023, defendant was charged by criminal complaint in Case No. 23-CF-443 with one count of aggravated battery/discharge of a firearm, a Class X felony (720 ILCS 5/12-3.05(h) (West 2022)), three counts of aggravated discharge of a firearm, Class 1 felonies (*id.* § 24-1.2(b)), and one count of unlawful possession of a weapon by a felon, a Class 2 felony (*id.* § 24-1.1(e)). On the same date, the circuit court issued a warrant for defendant's arrest and set his bond at \$250,000, requiring a deposit of 10%, in Case No. 23-CF-443. A grand jury returned a bill of indictment on all five counts against defendant in Case No. 23-CF-443 on March 31, 2023.

¶ 7 On April 6, 2023, the circuit court appointed a public defender to represent defendant in Case No. 23-CF-443. On April 11, 2023, defendant filed a motion to reduce bond or release him on a recognizance bond in Case No. 23-CF-443.

¶ 8 On August 23, 2023, defendant filed separate motions for release "pursuant to 725 ILCS 5/110-7.5" in Case Nos. 22-CF-1576 and 23-CF-443. In both motions, defendant alleged that he was in pretrial custody "after having been ordered released with pretrial conditions, including the condition of depositing security." Defendant also alleged the following in both motions:

"Pursuant to 725 ILCS 5/110-7.5, On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5... (or) 110-6.1."

In both motions, defendant requested release without the condition of depositing security or a “hearing pursuant to 725 ILCS 5/110-5 or 5/110-6.1.”

¶ 9 On August 29, 2023, the circuit court entered orders in Case Nos. 22-CF-1576 and 23-CF-443 reducing defendant’s bond over the State’s objection. Specifically, the court reduced defendant’s bond to \$200,000, requiring a deposit of 10%. Defendant did not post bond and remained in custody.

¶ 10 On September 12, 2023, the State filed a verified petition for pretrial detention pursuant to section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)) in Case No. 23-CF-443. The State alleged that defendant was charged with a forcible felony and that his pretrial release posed a real and present threat to the safety of any person or persons or the community. On September 20, 2023, the circuit court entered orders in Case Nos. 22-CF-1576 and 23-CF-443 setting the matter for hearing “pursuant to 725 ILCS 5/110-6.1 and 725 ILCS 5/110-7.5.”

¶ 11 On September 27, 2023, the circuit court held a hearing in Case Nos. 22-CF-1576 and 23-CF-443. At the outset of the hearing, the court noted that there was “a petition filed in each case^[3] by the State for detention and also a request for review pursuant to the SAFE-T Act on behalf of [defendant] by the Public Defender’s office.” The court also clarified that “at least one of the charges in 23-CF-443 [were] nonprobationable or [was] a nonprobationable forcible felony,” and that defendant was not charged with nonprobationable offenses in Case No. 22-CF-1576.

¶ 12 The State requested that defendant remain detained and that the circuit court deny defendant’s requests for pretrial release in Case Nos. 22-CF-1576 and 23-CF-443. The State noted that defendant was charged with a detainable offense as set forth in section 110-6.1(a) of the Code (*id.* § 110-6.1(a)) in Case No. 23-CF-443. The State further argued that defendant posed “a real

³The State filed a verified petition to detain in Case No. 23-CF-443 but did not file a petition to detain in Case No. 22-CF-1576.

and present threat to the safety of not only the victim in 23-CF-443 but to the persons within this community based on specific and articulable facts of 23-CF-443.”

¶ 13 The State then made a proffer “as to the facts in 443.” According to the State, the evidence would show that on November 24, 2022, Cahokia Heights police officers responded to a residence after a male subject was shot multiple times. When officers arrived at the scene, “the male suspect, who witnesses told police committed this offense, had fled from that residence, and he was not able to be located at that time.” The victim was rushed to the hospital and survived his injuries. Witnesses advised officers that defendant and the victim were involved in a verbal altercation, which resulted in defendant pulling a firearm and shooting the victim. The State asserted that defendant was charged with one count of aggravated battery/discharge of a firearm, three counts of aggravated discharge of a firearm, and one count of unlawful possession of a weapon by a felon. The State noted that defendant was not located until March 12, 2023, at which time he was arrested and taken into custody. Based on the seriousness of the charges in Case No. 23-CF-443, the ongoing threat defendant posed to the surviving victim, and defendant’s “proclivity toward possessing firearms as a convicted felon,” the State requested that defendant remain detained.

¶ 14 The defense argued that there was a possibility of self-defense. The defense further argued that defendant paid child support for his nine children and that he was currently employed. The defense asserted that defendant would live with his father in Cahokia if released. Lastly, the defense asserted that defendant was “not a flight risk or a danger to society.”

¶ 15 The circuit court then stated as follows:

“I find that there’s clear and convincing evidence set forth in what I’ve heard and what I’ve reviewed in the pretrial report.

[Defendant] does have a history of criminality.

I've also considered the facts and circumstances that have been presented by proffer and make findings that there's a presumption, a clear presumption, that the defendant has committed the qualifying offense.

Therefore, I find that there—that the defendant does pose a real and present danger or threat to the safety of individuals in the community in addition to the particular alleged victim here and that there are [*sic*] not a combination of conditions that could mitigate the danger and that there would—there wouldn't be any less restrictive conditions that could ensure the safety of members of the public.

Therefore, I order that [defendant] be detained and remanded back to the custody of the St. Clair County Sheriff until the resolution of these charges.”

¶ 16 Also, on September 27, 2023, the circuit court entered identical written orders in Case Nos. 23-CF-443 and 22-CF-1567, finding that defendant's detention was necessary to avoid the real and present threat or danger to any person or persons or the community and or willful flight from prosecution. The orders entered by the court were form orders that contained places for the court to make checkmarks indicating its findings. The court checked spaces on the orders indicating that the offense was detainable because it was a nonprobationable felony. The court also checked spaces on the orders indicating that it found, by clear and convincing evidence, “and for the reasons set forth on the record,” that defendant posed a real and present threat to the safety of any person or persons or the community and that there were not conditions or a combination of conditions that could mitigate the real and present threat defendant posed. In addition, the court found that less restrictive conditions would not ensure the safety of the community or ensure defendant's appearance in court. The court did not include any specific written findings pertaining to either case in the orders.

¶ 17 On October 11, 2023, defendant filed a timely notice of appeal pursuant to Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023) in Case Nos. 22-CF-1576 (Appeal No. 5-23-0894) and 23-CF-443 (Appeal No. 5-23-0893). This court, on our own motion, consolidated the appeals for decision.

¶ 18

II. ANALYSIS

¶ 19

A. Appeal No. 5-23-0894

¶ 20 In Appeal No. 5-23-0894, defendant argues that the State failed to prove, by clear and convincing evidence, that he was eligible for detention in Case No. 22-CF-1576 where the State did not file a proper petition to detain, did not show that he committed any qualifying offenses, and did not allege any specific articulable facts about the case. In its memorandum filed with this court, the State moves to strike defendant's memorandum and requests that this court dismiss defendant's appeal where defendant's notice of appeal made no references to the charges against him in Case No. 22-CF-1576. Alternatively, the State argues that defendant forfeited review of these issues where he failed to object at the detention hearing or raise the issues in his notice of appeal. The State also argues that the circuit court did not abuse its discretion by finding that the State met its burden of proving, by clear and convincing evidence, that defendant should be detained.

¶ 21 As a preliminary matter, we deny the State's motion to strike defendant's memorandum and dismiss the appeal. "Rule 604(h) requires the notice of appeal to include a description of the relief to be requested '*and the grounds for the relief requested.*' " (Emphasis in original.) *People v. Inman*, 2023 IL App (4th) 230864, ¶ 12 (quoting Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023)). "Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *People v. Smith*,

228 Ill. 2d 95, 104 (2008). “[W]hile a notice of appeal is jurisdictional, it is generally accepted that such a notice is to be construed liberally.” *Id.* Here, defendant filed identical notices of appeal in Case Nos. 22-CF-1576 and 23-CF-443. The relief requested in each notice of appeal was “RELEASE FROM CUSTODY.” Defendant listed Case No. 22-CF-1576 and indicated that he appealed from the circuit court’s September 27, 2023, order denying him pretrial release. Because defendant’s notice of appeal included a description of the relief requested and specified the judgment appealed, we have jurisdiction to consider his appeal and we deny the State’s request to dismiss the appeal.

¶ 22 We acknowledge that defendant’s notices of appeal combined two cases. Both notices of appeal focus on the facts of Case No. 23-CF-443. The checked boxes on both notices of appeal indicate that defendant’s arguments include: (1) the State failed to meet its burden of proving, by clear and convincing evidence, that the proof was evident or the presumption great that defendant committed the offense charged, (2) the State failed to meet its burden of proving that defendant posed a real and present threat to the safety of any person or the community, (3) the State failed to meet its burden of proving that no condition or combination of conditions could mitigate the real and present threat to the safety of any person or the community, and (4) the circuit 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. The supporting information under the allegation that the State failed to prove that the proof was evident or the presumption great that defendant committed the offense charged includes the sentence: “Defendant is charged with a shooting in this case, but there is no completely dispositive inculpatory forensic evidence, and no confession.” Defendant was not charged with a shooting in Case No. 22-CF-1576. The supporting information

under the other issues which are checked, however, could apply equally to both cases. Additionally, we note that defendant filed a memorandum, pursuant to Rule 604(h)(2), that clearly defined the issues he is pursuing on appeal as they relate to Case No. 22-CF-1576. Thus, we deny the State's request to dismiss Appeal No. 5-23-0894 based on defendant's failure to specify the grounds for relief in his notice of appeal.

¶ 23 The State argues, in the alternative, that defendant forfeited review of the issues raised for the first time in defendant's supporting memorandum by failing to object during the proceedings before the circuit court or include them in the notice of appeal. "However, 'forfeiture is a limitation on the parties and not the reviewing court, and we may overlook forfeiture where necessary to obtain a just result or maintain a sound body of precedent.'" *People v. Gray*, 2023 IL App (3d) 230435, ¶ 9 (quoting *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 65). In *Gray*, the Third District held that where the proceedings occurred within days of the implementation of the Act, "it would be inequitable to find defendant forfeited this issue when case law and arguments on the change in the law had still not been formed." *Id.* The Third District went on to state: "Nonetheless, this only applies to the case before us, and we take no position on forfeiture in future cases." *Id.* We find the reasoning of *Gray* persuasive and overlook defendant's forfeiture in the present case where the proceedings occurred within days of the implementation of the Act, but we take no position on forfeiture in future cases.

¶ 24 Turning to the merits, we consider defendant's argument that the circuit court erred by denying him pretrial release in Case No. 22-CF-1576 where the State failed to file a petition to detain and failed to offer any facts or evidence regarding the matter. 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).

¶ 25 The circuit court’s ultimate determination regarding the denial of pretrial release is reviewed for an abuse of discretion. *Trottier*, 2023 IL App (2d) 230317, ¶ 13. “An abuse of discretion occurs where the circuit court’s decision is arbitrary, unreasonable, or fanciful or where no reasonable person would have taken the position adopted by the circuit court.” *People v. Heineman*, 2023 IL 127854, ¶ 59.

¶ 26 Here, defendant acknowledges that he filed “a motion for release pursuant to 725 ILCS 5/110-7.5” in Case No. 22-CF-1576 on August 23, 2023. In the motion, defendant requested release without the condition of depositing security or a “hearing pursuant to 725 ILCS 5/110-5 or 5/110-6.1.” In his motion, defendant cited subsection (b) of section 110-7.5, which provides, in pertinent part, as follows: “On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5.” 725 ILCS 5/110-7.5(b) (West 2022). It is undisputed that the State filed a verified petition to detain in Case No. 23-CF-443 but did not file a verified petition to detain defendant in Case No. 22-CF-1576. It appears from the record that the circuit court was under the mistaken belief that the State had filed a verified petition to detain in Case No. 22-CF-1576, where it stated on the record that there was “a petition filed in each case by the State for detention and also a request for review pursuant to the SAFE-T Act on behalf of [defendant] by the Public Defender’s office.”

¶ 27 Our review of the record reveals that in conjunction with the State failing to file a petition to detain in Case No. 22-CF-1576, at the hearing, the State did not give a proffer nor did it present

any facts or evidence regarding Case No. 22-CF-1576. Additionally, there was no evidence that the offenses charged in Case No. 22-CF-1576 were detainable. Instead, the State only offered evidence and argument for detainment related to Case No. 23-CF-443.

¶ 28 Therefore, because there was no evidence presented by the State, the circuit court's determination that the State met its burden was against the manifest weight of the evidence, and thus, the court's detainment of defendant in Case No. 23-CF-1576 was an abuse of discretion.

¶ 29 B. Appeal No. 5-23-0893

¶ 30 In Appeal No. 5-23-0893, defendant argues that the circuit court erred when it granted the State's petition to detain because the Code does not allow the State to file a verified petition to deny pretrial release for defendants who remain in custody after having been ordered released on the condition of depositing security. Alternatively, defendant argues that counsel was ineffective for failing to move to strike the State's verified petition. The State argues that defendant forfeited review of this issue because he failed to raise the issue before the circuit court or in his notice of appeal.

¶ 31 As an initial matter, we agree with the State that defendant forfeited review of this issue by failing to object to the State's petition and by failing to raise this alleged error in his notice of appeal. Defendant argues that this court should review the issue under the second prong of the plain error doctrine, as the error affected his substantial rights. This court has previously applied the second prong of the plain error doctrine in reviewing a similar issue. See *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 23. However, "[t]he first step in a plain-error analysis is to determine whether a clear and obvious error occurred." *People v. Henderson*, 2017 IL App (3d) 150550, ¶ 37. "The burden of persuasion falls on defendant." *Id.* ¶ 38. "We review *de novo* the ultimate question of whether a forfeited error is reviewable as plain error." *Id.*

¶ 32 Here, defendant was arrested and detained in Case No. 23-CF-443 prior to the effective date of the Act. He filed a motion for release in Case No. 23-CF-443, requesting a hearing under sections 110-7.5 and 110-5 of the Code (725 ILCS 5/110-7.5, 110-5 (West 2022)) because he remained in pretrial detention after monetary bail was set. After defendant filed his motion, the State filed a verified petition to detain under section 110-6.1 of the Code (*id.* § 110-6.1). In other words, the State filed a verified petition to detain defendant in response to defendant’s motion for release. Our colleagues in the Third District have concluded that “the State is permitted to file a responding petition in situations such as this, where a defendant (1) was arrested and detained prior to the implementation of the Act, (2) remained in detention after monetary bail was set, and (3) filed a motion seeking to modify pretrial release conditions.” *Gray*, 2023 IL App (3d) 230435, ¶ 15. This court has followed the reasoning of *Gray*. See *People v. Cummings*, 2023 IL App (5th) 231001-U, ¶ 26 (“[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.”). Thus, defendant failed to meet his burden of proving that a clear and obvious error occurred in this case. In addition, defendant cannot show that counsel was ineffective for failing to move to strike the State’s petition to detain. See *People v. Stone*, 2018 IL App (3d) 160171, ¶ 20 (“[T]he absence of error nullifies any ineffective assistance of counsel argument because counsel’s performance is not deficient for failing to raise a meritless issue.”).

¶ 33 We note that defendant forfeited review of any other potential issues. “Rule 604(h) requires the notice of appeal to include a description of the relief to be requested ‘*and the grounds for the relief requested.*’ ” (Emphasis in original.) *Inman*, 2023 IL App (4th) 230864, ¶ 12 (quoting Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023)). Accordingly, “some form of argument is required, along

with justification for claiming entitlement to relief—like references to the record, the evidence presented, or, if possible, legal authority.” *Id.* A reviewing court “cannot be expected to formulate an argument for defendant out of whole cloth.” *Id.* ¶ 13. “The appellate court is not a depository in which the appellant may dump the burden of argument and research.” *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986).

¶ 34 Here, defendant fails to raise any additional arguments in his memorandum, including an argument that the circuit court abused its discretion by denying him pretrial release. Defendant did check a box in his notice of appeal indicating that the State failed to prove, by clear and convincing evidence, that he committed the charged offenses. In support, defendant asserted that he was charged with a shooting “but there is no completely dispositive inculpatory forensic evidence, and no confession.” Defendant also checked a box indicating that the State failed to prove, by clear and convincing evidence, that he posed 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. In support, defendant asserted that “[o]ther than the charge itself, the [State] cannot articulate how defendant would threaten society if released[.] Defendant is a resident of the area with nine children that he supports through his employment as a chef. [Defendant] would have a stable place to reside with his father.” Defendant also checked a box indicating that the State failed to prove, by clear and convincing evidence, that no condition or combination of conditions could mitigate the real and present threat to the safety of any person or persons or the community. In support, defendant asserted that “GPS monitor, pre-trial monitoring, and drug testing [could] all be employed if defendant were released.” Lastly, defendant checked a box indicating that the court erred by determining that no condition or combination of conditions would reasonably ensure defendant’s appearance at later hearings or prevent him from being charged with a subsequent felony or Class A misdemeanor. In support,

defendant asserted that “GPS, Pre-trial, and drug testing [could] be used to ensure compliance.” We acknowledge that defendant includes one or two sentences in support of each of these arguments in his notice of appeal. In our view, however, the arguments raised in defendant’s notice of appeal are insufficient to warrant review by this court. This is especially true where appellate counsel filed a memorandum with this court and did not raise these arguments in the memorandum. Thus, we conclude that defendant forfeited review of these issues on appeal.

¶ 35

III. CONCLUSION

¶ 36 For the reasons stated, we reverse the September 27, 2023, order entered by the circuit court of St. Clair County that denied defendant pretrial release in Case No. 22-CF-1576 (Appeal No. 5-23-0894), and we affirm the September 27, 2023, order entered by the circuit court that denied defendant pretrial release in Case No. 23-CF-443 (Appeal No. 5-23-0893).

¶ 37 Appeal No. 5-23-0894, Reversed.

¶ 38 Appeal No. 5-23-0893, Affirmed.