

2024 IL App (2d) 240220-U
No. 2-24-0220
Order filed June 27, 2024

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

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 23-CF-2372
)	
STEVEN D. CONNER,)	Honorable
)	James K. Booras,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice McLaren and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in granting the State’s motion to reconsider and ordering defendant’s continued pretrial detention.

¶ 2 In this interlocutory appeal under Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023), defendant, Steven D. Conner, timely appeals the March 7, 2024, order of the circuit court of Lake County granting the State’s motion to reconsider pretrial release and ordering defendant’s continued pretrial detention pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-1 *et seq.* (West 2022)), commonly known as the Pretrial Fairness Act (Act). See Pub. Acts 101-652, § 10-255, 102-1104, § 70 (eff. Jan. 1, 2023). Defendant contends

that the trial court erred by: (1) not immediately releasing him after it found that his continued detention was not necessary to avoid a real and present threat to the safety of any person or the community, but instead, entering an order staying his release pending a hearing on release conditions; and (2) granting the State's motion to reconsider and ordering defendant's continued detention while he awaits trial. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 1, 2023, defendant was charged with three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2022)) (Class X), four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b) (West 2022)) (Class 2 felony), and one count of aggravated criminal sexual abuse (720 ILCS 5/12-16 (West 2010)) (Class 2 felony) (renumbered as 720 ILCS 5/11-1.60(b) (West 2022)). The charges concern defendant's three stepdaughters, whom the State alleged defendant sexually abused when each child was between the ages of 8 and 10. The State filed a verified petition to detain defendant, alleging that he was charged with detainable offenses, that his pretrial release would pose a real and present threat to the safety of the victims, and that there was no set of conditions that could mitigate that real and present threat. The matter proceeded to a detention hearing, where the State asserted that defendant "moved from one victim to the next as they got older."

¶ 5 At the conclusion of the hearing, the trial court, Judge Theodore S. Potkonjak, presiding, granted the State's petition and ordered defendant's pretrial detention. Defendant moved to reconsider, and, on December 12, 2023, the trial court entered an order staying the 14-day period to file an appeal so that it could consider the motion. Defendant was indicted by the grand jury on January 3, 2024, and two counts of aggravated criminal sexual abuse were added. On January 10, 2024, after a hearing, Judge Potkonjak denied defendant's motion to reconsider.

¶ 6 Defendant filed a notice of appeal on January 23, 2024, and the appeal was docketed in this court as appeal No. 2-24-0086. There, defendant argued that the State failed to prove by clear and convincing evidence that he committed a detainable offense, that he posed a real and present threat to any person or the community, and that there was no condition or combination of conditions that would mitigate that threat. *People v. Conner*, 2024 IL App (2d) 240086-U, ¶ 2.

¶ 7 At a subsequent status hearing on February 29, 2024, and while appeal No. 2-24-0086 remained pending, a different judge, James K. Booras, found that defendant did not pose a real and present threat, and he granted defendant's pretrial release.¹ However, Judge Booras stayed defendant's release and set the matter for status on March 5, 2024, so that the court could hold a hearing on "release conditions." The trial court offered no written explanation for its ruling on the February 29, 2024, order.

¶ 8 On March 4, 2024, the State filed a motion to reconsider, arguing that the trial court had misapplied section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)). Specifically, the State argued that it presented, at the prior status date, specific articulable facts that defendant continued to pose a real and present threat to the safety of any person or the community, and it provided an analysis of the non-exhaustive "dangerousness" factors listed in section 110-6.1(g) of the Code (*Id.* § 110-6.1(g)). Further, it argued that there was no "new evidence, argument, or facts" presented to the court that would "justify a reversal" of the several detention orders that were previously entered in the case by two separate judges, and there was therefore no basis to conclude

¹The record does not contain a report of proceedings or an acceptable substitute from the February 29, 2024, hearing. Defendant states in his memorandum that he intends to supplement the record with the transcript, but, as of the date of this disposition, he has not done so.

that defendant no longer posed a threat. Additionally, the State argued that the court misapplied the Act because it “require[ed] both sides to argue whether the People can prove by clear and convincing evidence” the three propositions necessary to initially detain a defendant under section 110-6.1(e) of the Code (725 ILCS 5/110-6.1(e) (West 2022)), and it failed to evaluate whether defendant’s continued detention was appropriate under section 110-6.1(i-5) of the Code. *Id.* § 110-6.1(i-5).

¶ 9 Also on March 4, 2024, defendant filed a memorandum of law in support of his release. The purpose of the memorandum was “to offer [the trial court] ideas of conditions or combinations of conditions of release,” which included mandatory conditions of release, as well as certain discretionary conditions, such as he refrain from communicating with his stepdaughters, remain within the state, and be subject to electronic monitoring.

¶ 10 During the March 7, 2024, hearing on the State’s motion to reconsider, Judge Booras explained that, at the February 29 hearing, “if anything, [he] was inclined to explore the alternative conditions of release.” The court asked whether the State’s position was that, at that prior hearing, the court:

“shouldn’t have reconsidered facts or combination of conditions of release, *et cetera*, based upon the requirement of finding that the continued detention of the defendant is necessary to protect the public basically. That’s all I had to find, right? I did not have to rehash everything that was litigated before.”

The State agreed with the court’s summation, and the court thereafter engaged in further reflection:

“So, the [February 29, 2024,] hearing was basically moot. All [that] was necessary is for me to enter the order that the defendant’s continued detention is necessary to prevent him from harming anyone else or the victims themselves.”

The State, again, confirmed that the court’s understanding of the State’s position was correct, and it asserted that, absent “any new issues” or evidence, “there was no reason to overturn two prior findings that the defendant posed a real and present threat.”

¶ 11 Defendant responded at the hearing that he was “not asking [Judge Booras] to be an appellate court,” but rather, defendant’s position was that the State failed, at the February 29 hearing, “to show clear and compelling [*sic*] evidence that continued detention is necessary to avoid a real and present threat to the safety of any person or persons in the community.”

¶ 12 The circuit court agreed with the State and found that defendant continued to pose a real and present threat to the safety of any person or the community based on the specific articulable facts of the case, as well as that defendant posed a high likelihood of willful flight to avoid prosecution. The court granted the State’s motion to reconsider, vacated its February 29, 2024, order, and ordered defendant’s continued detention.

¶ 13 Defendant filed a notice of appeal in the instant matter on March 21, 2024, which we docketed as appeal No. 2-24-0220.

¶ 14 On April 19, 2024, we issued our decision in defendant’s first appeal, *Conner*, 2024 IL App (2d) 240086-U, ¶ 2, holding that the trial court did not err in granting the State’s petition to detain defendant.

¶ 15 Defendant subsequently filed a Rule 604(h) memorandum in support of appeal No. 2-24-0220, and the State filed a response memorandum.

¶ 16 **II. ANALYSIS**

¶ 17 Defendant raises two primary arguments in the instant appeal. First, he argues that he should have been released on February 29, 2024, when Judge Booras made a finding that defendant did not pose a real and present threat. Defendant contends that the stay of his pretrial release was

improper because, under section 110-6.1(e) of the Code, a defendant is presumed eligible for release unless the State proves by clear and convincing evidence that: (1) the proof is evident or the presumption great that the defendant has committed an offense that qualifies for pretrial detention; (2) the defendant poses a real and present threat to the safety of any person based on the specific and articulable facts of the case; and (3) no condition or combination of conditions could mitigate the real and present threat, based on the specific and articulable facts of the case. *Id.* Defendant argues that he should have been released immediately upon the finding that he did not pose a real and present threat because “the three required elements for detention were not met.” Second, defendant argues that, “[h]ad the court properly applied the law” and immediately released him, then “the State’s motion to reconsider may not have been a proper pleading.” According to defendant, the Act does not expressly allow the State to seek reconsideration under these circumstances. Defendant contends that, once released, the State would have been limited to two options if it wished to again have him detained pending trial—it could have appealed the February 29, 2024, order (see 725 ILCS 5/110-6.1 (West 2022) (providing that “[t]he State may appeal any order entered under this Section denying any motion for denial of pretrial release”)), or it could have moved to revoke defendant’s release if he were to be subsequently charged with a felony or class A misdemeanor committed during pretrial release (725 ILS 5/110-6(a) (West 2022)). Because the State did not take either action, defendant suggests that he could not have been subject to pretrial detention based on the State’s motion to reconsider. In a related argument, defendant asserts that the State did not meet its burden for reconsideration.

¶ 18 We consider defendant’s arguments in the opposite order that he presents them, because, if the State’s motion to reconsider was not improvidently granted such that defendant’s continued detention was warranted, then defendant suffered no tangible prejudice by the court’s decision to

stay his release pending a hearing on the appropriate conditions of release.

¶ 19 Our review of pretrial detention and release determinations typically proceeds under a bifurcated standard of review. See *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. That is, we review the trial court’s factual findings to determine if they are against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *In re Marriage of Kavchak*, 2018 IL App (2d) 170853, ¶ 65. As for the court’s ultimate determination of pretrial release, we review it for an abuse of discretion. *Trottier*, 2023 IL App (2d) 230317, ¶ 13. An abuse of discretion occurs only when the trial court’s ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* Here, however, defendant challenges the trial court’s decision to grant the State’s motion to reconsider—which had the practical effect of ordering defendant’s continued detention under section 110-6.1(i-5) of the Code. Orders for continued detention are reviewed for an abuse of discretion. *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 16. We therefore will apply that standard.

¶ 20 Defendant’s argument that the State was *perhaps* not entitled to file a motion to reconsider is a nonstarter, and we reject it. It has long been held 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). Indeed, as long as the case is properly pending before it, the trial court has jurisdiction to reconsider any order that it has previously entered. *Id.* See also *Balciunas v. Duff*, 94 Ill. 2d 176, 185 (1983) (“an interlocutory order may be reviewed, modified or vacated at any time before final judgment, and it is of no consequence that the original order was entered by another circuit judge”). Thus,

contrary to defendant's argument, it is irrelevant that the Act is "silent on a motion to reconsider," because the trial court is empowered to correct its prior rulings even in the absence of express authority. We also note that, subsequent to the proceedings in this case, Rule 604(h)(2) was amended to require, as a prerequisite to appeal a pretrial release decision, that the appealing party "first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief." Ill. S. Ct. R. 605(h)(2) (eff. Apr. 15, 2024). Our determination that the State was entitled to seek reconsideration of the trial court's February 29, 2024, ruling therefore finds further support in this recent rule amendment.

¶ 21 We turn to the merits of the State's motion to reconsider. One of the proper purposes of a motion to reconsider is to alert the court to errors in the court's previous application of existing law. *People v. Bryant*, 369 Ill. App. 3d 54, 60 (2006). Indeed, "[p]ublic policy favors correcting errors at the trial level, and a timely motion to reconsider is an appropriate method to direct the trial court's attention to a claim of error." *Id.* at 60-61.

¶ 22 At the March 7, 2024, hearing, the State argued that the trial court misapplied the Act because defendant continued to pose a real and present threat to the victims, in part, because nothing had changed between the initial entry of defendant's order of detention, issued on December 1, 2023, by Judge Potkonjak, and the subsequent February 29, 2024, hearing, where Judge Booras found that defendant did not pose a real and present threat. The State elaborated:

"[W]e need something new in order to change our minds, specifically to real or present threat. Something has to have happened, an intervening factor, to change the fact that two judges in this case and in four separate orders have said that [defendant] does present a real or present threat to the community. There needs to be something new, and there wasn't in this case."

The State reiterates that argument on appeal.

¶ 23 Defendant responds that it was unnecessary for the trial court to hear any new facts, evidence, or argument to conclude that he no longer presented a real and present threat to any person or the community. Defendant further asserts that the State’s argument represents an improper attempt to “shift the burden onto the Defense to prove ‘new facts’ or otherwise when the State carries the burden to prove the elements” to justify defendant’s continued detention.

¶ 24 We reject defendant’s assertion because, in the absence of *any* change in the circumstances that formed the basis to detain defendant following an initial detention hearing, there is no basis for a trial court to disturb that determination at a subsequent court appearance. See *Thomas*, 2024 IL App (1st) 240479, ¶ 14. Here, defendant’s initial detention hearing was held on December 1, 2023, where the burden was on the State to prove by clear and convincing evidence each of the three propositions listed above. See 725 ILCS 5/110-6.1(e)(1)-(3) (West 2022). The trial court determined that the State satisfied its burden, and it accordingly granted the State’s petition and ordered that defendant be detained pending trial. Defendant thereafter moved to reconsider, which the trial court denied on December 10, 2023. Defendant appealed that decision, and we affirmed. *Conner*, 2024 IL App (2d) 240086-U, ¶ 2.

¶ 25 Although defendant failed to provide this court with a report of proceedings or an acceptable substitute of the February 29, 2024, hearing, the trial court’s comments on March 7, 2024, provide some insight into what occurred at that earlier hearing. Specifically, the court “rehash[ed] everything that was litigated before,” including whether defendant committed a detainable offense, whether his pretrial release would pose a danger to the victims, and whether there were any conditions that could mitigate that danger. This procedure did not comport with the requirements of the Act and erroneously provided defendant with a second opportunity to

challenge the initial detention determination. See *People v. Casey*, 2024 IL App (3d) 230568, ¶ 13 (“[t]he Code does not require the court to again make specific findings that the State proved the three propositions by clear and convincing evidence as required at the initial hearing”).

¶ 26 For *subsequent* hearings, such as the February 29, 2024, hearing at issue here, section 110-6.1(i-5) applies. This subsection requires the court to find that “continued detention is 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.” As this court has previously observed, “subsequent determinations are not subject to every statutory requirement that applies to detention hearings.” *People v. Harris*, 2024 IL App (2d) 240070, ¶ 37 (citing *Casey*, 2024 IL App (3d) 230568, ¶ 13). See also *People v. Stokes*, 2024 IL App (1st) 232022-U, ¶ 36 (“Because the Statute requires fewer findings at subsequent appearances as opposed to upon the State’s verified petition to deny pretrial release, it is clear that the hearing, and its accompanying criteria, required under section 110-6.1(a)(1)-(7) is not required at subsequent appearances, regardless of whether a new judge has been assigned to the case”). Indeed, “rather than ask whether pretrial conditions can mitigate the threat posed by defendant, [section 110-6.1(i-5)] starts from the premise that detention was necessary to guard against that threat and *asks whether anything has changed* such that a defendant’s detention is no longer warranted.” (Emphasis added.) *Thomas*, 2024 IL App (1st) 240479, ¶ 14. Although sparse, the record suggests that Judge Booras failed to follow this procedure at the February 29, 2024, hearing.

¶ 27 Here, defendant offers no argument that any circumstance has changed since his initial detention hearing that would warrant his release while he awaits trial. He likewise does not argue that he is no longer a threat to the victims or the community at large. Instead, defendant relies on the competing finding made by Judge Booras on February 29, 2024, as to defendant’s

dangerousness, argues that Judge Booras lacked authority to reconsider that finding, and concludes that defendant's immediate pretrial release is required. In the absence of any new evidence, facts, or argument that would suggest that defendant's continued detention is no longer necessary to avoid a real and present threat to the safety of any person or the community, based on the specific articulable facts of the case, Judge Booras's ruling granting the State's motion to reconsider and ordering defendant's continued pretrial detention was not an abuse of discretion. *Thomas*, 2024 IL App (1st) 240479, ¶ 14.

¶ 28 Because of our determination, we need not evaluate whether the trial court erred in staying defendant's release so that it could hold a hearing on appropriate release conditions. However, even if we were inclined to review the merits of this issue, defendant's failure to present a transcript of the February 29, 2024, hearing or an acceptable substitute would compel us to presume that the trial court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391. As the State points out, the lack of a transcript prevents us from ascertaining precisely what transpired at the February 29 hearing, and we have no way of knowing whether defendant objected, acquiesced, or perhaps even requested the stay. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Id.* at 392. By failing to provide an adequate record to review whether the trial court's decision to stay defendant's release was in error, we would presume that the ruling was proper.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the order of the circuit court of Lake County granting the State's motion to dismiss and ordering defendant's continued detention while he awaits trial.

¶ 31 Affirmed.