

**NOTICE**  
Decision filed 12/27/23. 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) 231001-U

NO. 5-23-1001

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Vermilion County.
	)	
v.	)	No. 23-CF-562
	)	
ALECZE CUMMINGS,	)	Honorable
	)	Charles C. Hall,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Welch and Moore concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where the defendant filed a motion for reconsideration of the conditions of his pretrial release, the State was permitted to file a responsive pleading to deny defendant pretrial release and the trial court did not err in conducting a hearing on those matters. The trial court did not abuse its discretion in denying the defendant pretrial release and the order of detention is affirmed.
- ¶ 2 The defendant, Alecze Cummings, appeals the trial court’s order of October 10, 2023, denying the defendant’s pretrial release pursuant to Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-

T) Act (Act).<sup>1</sup> See Pub. Act 101-652, § 10-255 (eff. Jan. 1, 2023); see also Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). The defendant claims that the trial court erred in granting the State’s verified petition to deny pretrial release because the Act does not allow the State to file such a petition in cases where a defendant remains in custody after having been ordered released on the condition of depositing security. In this case, the defendant was arrested and detained before September 18, 2023—the date the Act went into effect. As such, this appeal presents a narrow issue relevant only to those defendants who were arrested and detained prior to the effective date of the Act. For the reasons that follow, we affirm.

¶ 3

#### I. BACKGROUND

¶ 4 On September 13, 2023, the defendant was charged by information<sup>2</sup> with unlawful use of a weapon by a felon, a Class 2 felony and nonprobationable, extended-term eligible offense. The defendant appeared in Vermilion County circuit court that same day. The trial court appointed the public defender to represent the defendant. The court also set the defendant’s bond at \$200,000, with 10% to apply. The defendant was unable to post bond and remained in pretrial detention.

¶ 5 On September 29, 2023, the defendant filed a motion for reconsideration of his pretrial release conditions pursuant to section 110-7.5(e) of the Code of Criminal Procedure

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<sup>1</sup>The Act has been referred to as the “SAFE-T Act” and the “Pretrial Fairness Act.” Neither name is official, as neither appears in the Illinois Compiled Statutes or public act. See *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1.

<sup>2</sup>On September 22, 2023, a Vermilion County grand jury indicted the defendant on the same charge.

of 1963 (Code) (725 ILCS 5/110-7.5(e) (West 2022)). The defendant alleged that he remained in pretrial detention after September 18, 2023, and that he had been previously ordered released with a condition that he deposit security—a condition no longer allowed by law. The defendant sent a notice that his motion would be called for hearing on October 10, 2023.

¶ 6 On October 10, 2023, prior to the hearing, the State filed a verified petition to deny the defendant pretrial release. When the hearing commenced, the trial court stated that the matter was set for a hearing on the defendant’s motion for reconsideration of pretrial release conditions. At that point, the State informed the court that it had filed a petition seeking to deny pretrial release and provided the court with a copy of the petition. The court asked whether both sides were ready to proceed. Both the State and the defense indicated they were ready. The court directed the State to proceed.

¶ 7 During its proffer, the State argued that the proof was evident and the presumption great that the defendant committed a Class 2 felony offense, that was nonprobationable and extended-term eligible. The State proffered that the defendant was driving a vehicle and was stopped by a police officer for speeding and illegal lighting. During the stop, the officer observed a bag of improperly packaged cannabis. The vehicle was subsequently searched, and a handgun was recovered from the beverage holder. There was one passenger in the vehicle. The passenger denied any knowledge of the handgun. The passenger indicated that he had only recently been picked up by the defendant, and that the defendant owned the vehicle. The State further argued that the defendant posed a real and present threat to the community and that no combination of conditions of release could mitigate that threat. The

State pointed out that at the time the current offense was committed, the defendant was on bond on a pending charge of unlawful possession of a weapon in Champaign County. The defendant also had a 2016 conviction for unlawful use of weapon by a felon and a 2014 burglary conviction.

¶ 8 In response, defense counsel proffered that the gun was found in a compartment in the armrest in the rear seat of the vehicle and there was no indication that the defendant had reached in that direction. Counsel also stated that the passenger was on probation for unlawful use of a weapon by a felon and had a reason to deny knowledge of the gun. Counsel noted that the police obtained DNA samples from the defendant, his passenger, and the gun, and the analysis of those samples had not been completed. Counsel argued that the State did not establish by clear and convincing evidence that the proof was evident or the presumption great that the defendant committed the offense. Counsel also argued that there was no evidence of dangerousness, and even assuming there was sufficient evidence that the defendant posed a danger to the community, the danger could be mitigated by imposing conditions, such as directing the defendant to stay away from weapons.

¶ 9 In reply, the State argued that the gun was “loaded and chambered.” The State further argued that the defendant’s pending case in Champaign County was similar to the current case in that the defendant had been stopped for a traffic violation and the police discovered a gun inside a bag in the vehicle that defendant was driving. In reply, defense counsel claimed that the State’s argument was an improper “propensity” argument.

¶ 10 At the conclusion of the proceedings, the trial court entered an order to detain the defendant. In its ruling from the bench, the court found by clear and convincing evidence that the proof was evident or the presumption great that the defendant committed a qualifying offense; that the defendant posed a real and present threat to the safety of any person or persons in the community, based on the specific articulable facts of the case; and that no condition or combination of conditions could mitigate the real and present threat to the safety of any person or persons. The court explained that the issue before it was whether the defendant should be detained under the dangerousness standard of the Code. The court determined that less restrictive conditions would not assure the safety of any person or persons or the community. The court noted that the present offense was a Class 2, nonprobationable, extended-term eligible offense, that the defendant had a conviction for unlawful possession of a weapon by a felon, and two pending cases charging him with unlawful possession of a weapon by a felon, that the defendant was out on bond in a case in Champaign County for unlawful use of a weapon at the time the present offense was committed; the defendant had a prior Class 1 felony for a large amount of cannabis; and the defendant had a prior burglary conviction. The trial court issued a written order of detention that day, providing the findings and reasons for its decision. In the order, the court made a handwritten notation that the hearing was held on the “Motion For Reconsideration of Pretrial Release Conditions” and the State’s petition to deny pretrial release. The defendant filed a timely notice of appeal. Ill. S. Ct. R. 604(h)(2) (eff. Oct. 19, 2023).

¶ 11

## II. ANALYSIS

¶ 12 In this appeal, the defendant used the approved standardized notice of appeal form for appeals brought under Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023). In the notice of appeal, the defendant indicated that he was appealing the order of October 10, 2023, and that he was seeking “Pretrial Release of Defendant.” As grounds for relief, the defendant claimed that the State failed to meet its burden of proving by clear and convincing evidence that the proof was evident or the presumption great that he committed the offense charged. In support, the defendant argued that there was no forensic evidence connecting him to the weapon, and that his passenger was a convicted felon. The defendant also claimed that the State failed to show by clear and convincing evidence that the defendant poses a real and present threat to the safety of any person or persons or the community, based on specific, articulable facts of the case; and no condition or combination of conditions could mitigate that threat. The defendant argued that the court found that the defendant was dangerous simply because he was allegedly in possession of a gun. The defendant pointed out that he had no prior convictions involving violence, and that there was no evidence that he had used the gun or planned to use the gun. He asserted that a requirement that he not possess a weapon would alleviate any danger to the public.

¶ 13 The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant on appeal. OSAD filed a memorandum pursuant to Illinois Supreme Court Rule 604(h)(2). In its memorandum, OSAD did not address any of the grounds asserted in the defendant’s notice of appeal. Instead, OSAD raised a completely different issue. Relying on *People v. Rios*, 2023 IL App (5th) 230724, and *People v. Vingara*, 2023 IL App (5th)

230698, OSAD claimed that the trial court erred in granting “the State’s petition to detain because the Pretrial Fairness 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.” OSAD further claimed that the trial court should have considered the defendant’s motion for reconsideration of his pretrial release conditions instead of the State’s petition to deny pretrial release. OSAD has acknowledged that the defendant did not move to strike the State’s petition, and argues that the issue may be reviewed under the second prong of the plain error doctrine because the error affected the defendant’s substantial rights. In the alternative, OSAD contends that defense counsel’s failure to move to strike the State’s petition constituted ineffective assistance of counsel.

¶ 14 The State filed a memorandum in response. Therein, the State initially noted that the issue raised in the defendant’s memorandum was completely different from the grounds for relief set forth in the defendant’s notice of appeal. Nevertheless, the State addressed the issue raised in the defendant’s memorandum on the merits. The State claimed that *Rios* and *Vingara* were procedurally distinguishable from the case at bar. The State argued that unlike the defendants in *Rios* and *Vingara*, the defendant here filed a motion for reconsideration of the financial condition of his pretrial release, and the State filed its petition in “response” to the defendant’s motion. Relying on *People v. Hanes*, 2023 IL App (4th) 230822-U, the State concluded that its petition was a proper responsive pleading. The State further argued that the trial court properly considered the defendant’s motion to remove the financial condition of his pretrial release and the State’s responsive petition to deny pretrial release during the hearing on October 10, 2023.

¶ 15 Before turning to the merits of the appeal, we briefly address the matter of forfeiture. On appeal, the defendant acknowledges that he did not object to or move to strike the State’s verified petition in the trial court. Notably, the State has not argued that the issue is forfeited. The State addressed the issue on the merits. We note that “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. Holmes*, 2016 IL App (1st) 132357, ¶ 65. Given that the proceedings in the case occurred shortly after the effective date of the Act and that the State has not argued for forfeiture, we will address the merits of this argument. We caution that our decision to overlook forfeiture is limited to this specific case and we take no position on forfeiture in future cases.

¶ 16 The defendant’s argument presents an issue of statutory construction. “The primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature.” *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 48. The best indication of the legislative intent is the plain language of the statute. *Jackson*, 2012 IL 111928, ¶ 48. “The statute should be evaluated as a whole, with each provision construed in connection with every other section. When the statutory language is clear, we must apply the statute as written without resort to other tools of construction.” *Jackson*, 2012 IL 111928, ¶ 48.

¶ 17 Pretrial release is governed by article 110 of the Code (725 ILCS 5/art. 110 (West 2022)), as amended by the Act. 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). Upon filing a timely, verified petition requesting denial of pretrial release, the State

has the burden to prove by clear and convincing evidence that the proof is evident or the presumption great that the defendant has committed a qualifying offense, 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 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. 725 ILCS 5/110-6.1(e), (f) (West 2022).

¶ 18 Section 110-6.1(c)(1) of the Code addresses the timing of the State's petition. 725 ILCS 5/110-6.1(c)(1) (West 2022). Section 110-6.1(c)(1) provides that the State may file a petition without prior notice to the defendant at the first appearance before a judge, or within 21 calendar days after arrest and release with reasonable notice to the defendant. 725 ILCS 5/110-6.1(c)(1) (West 2022). In this case, the defendant was arrested, and his bond was set prior to the effective date of the Act. Subsequently, the defendant filed a motion for reconsideration of the monetary condition of his bond, and the State then filed a petition to deny pretrial release in response. The defendant argues that the State was not allowed to file a petition to deny pretrial release where the defendant remained in custody after having been ordered released on the condition of depositing security, and he relies on this court's decision in *People v. Rios*, 2023 IL App (5th) 230724. The defendant's reliance on *Rios* is misplaced, as *Rios* is procedurally distinguishable from the case at bar.

¶ 19 In *Rios*, the defendant was arrested and detained prior to the effective date of the Act and the circuit court set bond, along with other conditions of pretrial release. *Rios*, 2023 IL App (5th) 230724, ¶ 3. The defendant, however, remained in pretrial detention. After the effective date of the Act, the State filed a petition to deny pretrial release. The

circuit court granted the State’s petition based upon its finding that the defendant should be detained according to the dangerousness standard, and the defendant appealed. *Rios*, 2023 IL App (5th) 230724, ¶¶ 5-6.

¶ 20 This court determined that the plain language of section 110-6.1(c)(1) (725 ILCS 5/110-6.1(c)(1) (West 2022)) set forth a deadline for the State to file a petition to detain. Specifically, this court determined that:

“The State may file a petition to detain at the time of the defendant’s first appearance before a judge; no prior notice to the defendant is required. Alternatively, the State may file a petition to detain the defendant within 21 calendar days after the arrest and release of the defendant; however, reasonable notice is to be provided to the defendant under this circumstance.” *Rios*, 2023 IL App (5th) 230724, ¶ 10.

¶ 21 This court found that the exceptions to the above timing requirements set forth in section 110-6 (725 ILCS 5/110-6 (West 2022)) were not applicable to the defendant since the defendant had not been released following his arrest and no new offenses had been alleged. *Rios*, 2023 IL App (5th) 230724, ¶ 12. As such, this court determined that the State’s petition to detain pursuant to section 110-6.1 was untimely, and that the circuit court did not have the authority to detain the defendant pursuant to the untimely petition. *Rios*, 2023 IL App (5th) 230724, ¶ 12. This court went on to find that the defendant fell within section 110-7.5(b) of the Code (725 ILCS 5/110-7.5(b) (West 2022)), because he was a person who remained in pretrial detention, on or after January 1, 2023, after having been ordered released with pretrial conditions. *Rios*, 2023 IL App (5th) 230724, ¶ 14. Section 110-7.5(b) states that such a defendant “shall be entitled to a hearing under subsection (e)

of Section 110-5.” 725 ILCS 5/110-7.5(b) (West 2022). This court further found that, in reviewing and analyzing sections 110-6.1(c)(1), 110-6, and 110-5(e) (725 ILCS 5/110-6.1(c)(1), 110-6, 110-5(e) (West 2022)), along with one another and the entire Code, defendants, such as the defendant in *Rios*, have the following two options:

“Under sections 110-7.5(b) and 110-5(e), a defendant may file a motion seeking a hearing to have their pretrial conditions reviewed anew. Alternatively, a defendant may elect to stay in detention until such time as the previously set monetary security may be paid. A defendant may elect this option so that they may be released under the terms of the original bail.” *Rios*, 2023 IL App (5th) 230724, ¶ 16.

¶ 22 This court came to the above conclusion because, although the plain language of section 110-1.5 of the Code (725 ILCS 5/110-1.5 (West 2022)) abolished the requirement of posting a monetary bail, it did not eliminate the option to post the previously ordered security, and some defendants may prefer the second option, as opposed to requesting a hearing. *Rios*, 2023 IL App (5th) 230724, ¶ 17.

¶ 23 In this case, like *Rios*, the defendant was arrested and had a cash bond set prior to the effective date of the Act—September 18, 2023. The defendant was unable to post bond and he remained in pretrial detention. Unlike *Rios*, the defendant filed a motion to reconsider the conditions of pretrial release on September 29, 2023, pursuant to section 110-5(e) (725 ILCS 5/110-5(e) (West 2022)). Specifically, the defendant asked the court to remove the deposit of monetary security as a condition of his pretrial release. On October 10, 2023, the State filed a responsive petition to deny pretrial release.

¶ 24 Section 110-6 of the Code addresses, among other things, the revocation of pretrial release and the modification of pretrial release conditions. 725 ILCS 5/110-6 (West 2022). Section 110-6(g) provides, “The court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in this subsection. The court may only add or increase conditions of pretrial release at a hearing under the Section.” 725 ILCS 5/110-6(g) (West 2022). Section 110-6 further provides, “Nothing in this Section shall be construed to limit the State’s ability to file a verified petition seeking denial of pretrial release under subsection (a) of Section 110-6.1 or subdivision (d)(2) of Section 110-6.1.” 725 ILCS 5/110-6(i) (West 2022).

¶ 25 Based upon the plain language of the Code, a defendant who was arrested prior to the implementation of the Act and who remains in detention after having been ordered released with conditions, including the posting of monetary security, has the option (a) to remain in detention until the previously set monetary security may be paid, or (b) to 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 (725 ILCS 5/110-7.5(b), 110-5(e) (West 2022)). See *Rios*, 2023 IL App (5th) 230724, ¶¶ 16-17. Section 110-6(g) provides for the removal of previously set conditions of pretrial release upon motion by either party or on the court’s own motion; it also provides for the increase of conditions of pretrial release at a hearing. 725 ILCS 5/110-6(g) (West 2022). If a defendant moves to modify the conditions of pretrial release, the State may file a responsive petition. See *People v. Gray*, 2023 IL App (3d) 230435, ¶ 14. Upon a defendant’s motion to have his conditions of pretrial release reviewed, the trial court shall hold a hearing during which the defendant may argue for the most lenient

pretrial release conditions, and the State may make competing arguments. *Gray*, 2023 IL App (3d) 230435, ¶ 14.

¶ 26 Contrary to the defendant's argument, the 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. Therefore, we reject the defendant's contentions that the trial court erred when it considered the State's responsive petition.

¶ 27 **III. CONCLUSION**

¶ 28 After reviewing the record, we find that the trial court properly considered the defendant's motion to reconsider his conditions of pretrial release and the State's responsive petition to deny pretrial release during the hearing on October 10, 2023. The record shows that the trial court afforded the defendant a hearing on the conditions of pretrial release. The State and the defendant alike had the opportunity to make proffers and arguments in support of their respective positions. After considering the proffers and arguments of counsel, the trial court concluded that it was necessary to detain the defendant, finding that the defendant posed a real and present threat to the community and that no condition or set of conditions could mitigate that threat.

¶ 29 As noted above, the defendant filed a notice of appeal in which he alleged that the State failed to meet its burden to show by clear and convincing evidence that the proof was evident or the presumption great that defendant committed the offense charged; that the defendant posed a real and present treat to the safety of the community, based on specific, articulable facts of the case; and that no condition or combination of conditions could

mitigate that threat. These issues were not addressed in OSAD's 604(h) memorandum. Nevertheless, we have thoroughly reviewed the record, and find that the trial court did not abuse its discretion in denying pretrial release.

¶ 30 Accordingly, the trial court's order of October 10, 2023, is affirmed.

¶ 31 Affirmed.