Illinois Official Reports

Appellate Court

People v. Burries, 2025 IL App (5th) 241033

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROY L. BURRIES, Defendant-Appellant.
District & No.	Fifth District No. 5-24-1033
Filed Rehearing denied	January 22, 2025 February 11, 2025
Decision Under Review	Appeal from the Circuit Court of Macon County, No. 24-CF-1347; the Hon. Jeffrey S. Geisler, Judge, presiding.
Judgment	Appeal dismissed.
Counsel on Appeal	James E. Chadd, Carolyn R. Klarquist, and Samuel B. Steinberg, of State Appellate Defender's Office, of Chicago, for appellant Patrick Delfino and David J. Robinson, of State's Attorneys Appellate Prosecutor's Office, of Springfield, for the People.
Panel	JUSTICE BOIE delivered the judgment of the court, with opinion. Justice Barberis concurred in the judgment and opinion. Justice Moore dissented, with opinion.

OPINION

¶ 1 On July 24, 2024, the circuit court ordered the defendant, Roy L. Burries, detained pending trial. The circuit court considered the necessity of continued detention on August 7, 2024. The circuit court held a hearing on the defendant's "motion for relief" on September 12, 2024. The defendant filed a pretrial detention appeal pursuant to Illinois Supreme Court Rule 604(h) (eff. Apr. 15, 2024). For the following reasons, we dismiss the appeal.[1]

¶ 2 I. BACKGROUND

¶ 3 The defendant was arrested on July 23, 2024, following a traffic stop by the Decatur Police Department during which a loaded 9-millimeter Ruger revolver was located in the center console of the vehicle the defendant was driving. On July 24, 2024, the defendant was charged by information with one count of being an armed habitual criminal, a Class X felony, and one count of unlawful possession of a weapon by a felon, a Class 2 felony.

¶ 4 The same day, the State filed a verified petition to deny the defendant pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)). The circuit court held a hearing and granted the petition the same day, denying the defendant pretrial release. The circuit court found that the State had met its burden to prove by clear and convincing evidence that the defendant committed the offenses of being an armed habitual criminal and unlawful possession of a weapon by a felon, both qualifying detainable offenses. See *id.* The circuit court further found that the defendant posed a real and present threat to the safety of any person or the community, and there was no condition or combination of conditions that could mitigate the real and present threat.

¶ 5 The defendant's preliminary hearing was held on August 7, 2024. After the circuit court found that there was probable cause to believe the defendant committed the offenses as charged in the information and a plea of not guilty was entered, counsel for the defendant made an oral motion regarding pretrial detention. Defense counsel argued that the defendant should be released from detention because the last conviction the defendant had was in 2021, for possession of a controlled substance, and prior to that, his most recent conviction was in 2011, for driving on a revoked license. Defense counsel also argued that the defendant, who was 52 years old at the time, was an "older gentleman," and that he had a heart condition, including a stent in his heart, so he needed to be released to have contact with his doctor and to ensure he is taking his medication regularly. Defense counsel argued that the defendant was not a danger to the community presently, when looking at the age of his prior convictions, and requested that the defendant be released. The State argued that this information was not new information, since it had been presented to the circuit court at the initial detention hearing, and that since nothing had changed since the initial hearing, the defendant should remain in detention. The circuit court identified the hearing as a "motion to reconsider detention." The circuit court agreed with the State, finding that nothing had changed since the original order of July 24, 2024, and that the defendant should remain in pretrial detention.

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[1]Pursuant to Illinois Supreme Court Rule 604(h)(8) (eff. Apr. 15, 2024), our decision in this case was due on or before December 30, 2024, absent a finding of good cause for extending the deadline. Due to the extent of the analysis in the present matter, we find there to be good cause for extending the deadline in the present matter.

¶ 6 On August 29, 2024, the defendant, through counsel, filed a pleading, titled "Motion to Reconsider Order Detaining Defendant Pretrial." The pleading set forth the following:

> "NOW COMES Defendant, ROY BURRIES, by and through his attorney, ***, and moves this Court to reconsider its order detaining Defendant pre-trial and [in] support thereof states as follows:
>
> 1. That since his arrest in this cause on or about July 23, 2024, Defendant has remained in custody.
>
> 2. That if released on pretrial release, Defendant would reside with ***, at *** Decatur, IL 62526.
>
> 3. That Defendant suffered a heart attack and had a stent placed last year and it is imperative he attend follow-up visits with his doctor.
>
> 4. That since Defendant has been in custody he has not been given his medications on time each day, making it difficult for him to properly take care of his ongoing heart condition.
>
> 5. That Defendant's primary family including his brothers, sisters and 14 grandchildren all reside in the Decatur area.
>
> 6. That Defendant requested release with conditions pending the resolution of this matter.
>
> That his request for Pretrial Release with conditions was denied on *August 7, 2024*.
>
> WHEREFORE, ROY BURRIES, Defendant, respectfully requests that this Court reconsider its order detaining him pre-trial, order that he be released on conditions, and grant any other such and further relief as this Court deems reasonable and just." (Emphasis added.)

¶ 7 On September 12, 2024, the circuit court held a hearing on said motion. The following exchange occurred at the beginning of the hearing:

> "THE COURT: Then 24-CF-1347, the People versus Roy Burries. Show the People are present by [Assistant State's Attorney]. The defendant is present in custody in this case with [defense attorney].
>
> And, [defense counsel], you filed a motion to reconsider the order detaining the defendant.
>
> [DEFENSE COUNSEL]: That's correct, Your Honor.
>
> THE COURT: I assume that's more in the nature of a motion for relief?
>
> [DEFENSE COUNSEL]: Correct, Your Honor."

¶ 8 The circuit court then heard testimony from Tomika Rehmann, a witness on behalf of the State. Rehmann testified that she is a registered nurse that supervises the medical department at the jail. She testified regarding the procedures for dispensing medication at the jail and that the defendant had received his prescribed medication in a timely manner.

¶ 9 On cross-examination, Rehmann was asked about the medications the defendant was prescribed. She described each medication and the dosage for the defendant. She testified that since being detained, the jail medical provider increased the dosage of the defendant's high blood pressure medications. Additionally, the defendant was prescribed medication for his cholesterol and a blood thinner.

¶ 10 Following the testimony from Rehmann, defense counsel made a proffer, indicating that the defendant had a heart condition and that being in custody was difficult for the defendant's health. Defense counsel argued that the predicate offenses for the defendant's armed habitual criminal charge dated back to 1993. Defense counsel further argued that the defendant was not dangerous and that, even if he was, that could be mitigated with conditions of release.

¶ 11 Following the presentation of evidence and arguments, the circuit court made the following oral pronouncement:

> "Fortunately or unfortunately the defendant is on the same blood pressure medicine as the Court. Same cholesterol medicine as the Court. My blood pressure is somewhere near where his is at right now. So I'm very familiar with the blood pressures that he's on. I've never had a heart attack.
>
> I don't have a stent. I'm more than ten years older than the defendant so I do have a little bit of knowledge on this. I have listened to the nurse in this case and the treatment that he is getting in jail in this case. So as I look at the motion for relief in this, I do look at the original Court's detention order in this. I did find that proof was evident presumption great he's committed a detainable offense.
>
> I do find he poses a real and present threat to the safety of any person or person in the community based on the specific facts. He did have a loaded gun. He's charged with non-probational offenses in this situation. I am aware that a lot of his record is from over 20 years ago in this situation. But I do find that somebody driving around with a loaded gun does pose a real and present threat to the community.
>
> As far as conditions and combination of conditions set forth, I don't find there are any combination of conditions set forth that can mitigate that real and present threat. Even home detention doesn't keep somebody from possessing a firearm. So in this case, as to the motion to reconsider, I listened to the arguments in this case, but I am going to deny the motion for relief.
>
> I am going to find that detention is necessary in this situation given all of the facts and circumstances in this, his criminal history, the severity of the offense, he has been sent to the Department of Corrections, and the facts and circumstances in this case."

¶ 12 The circuit court advised the defendant of his appeal rights, and on September 19, 2024, the defendant filed a timely notice of appeal. The defendant utilized the form notice of appeal approved for Rule 604(h) appeals with the defendant as the appellant. Ill. S. Ct. Rs. Art. VI Forms Appendix R. 604(h) ("Defendant as Appellant"). The defendant's notice of appeal was titled "Notice of Appeal From Pretrial Detention or Release Order Pursuant to Illinois Supreme Court Rule 604(h) (Defendant as Appellant)," and indicated, *inter alia*, as follows:

> "Date of Order on Motion for Relief*: 9/12/2024
>
> *Without an Order on a Motion for Relief, this notice of appeal is prohibited by Rule 604(h)(2).
>
> Date(s) of Hearing(s) Regarding Pretrial Release: 9/12/2024."

Under the prompt in the form for "Nature of Order Appealed," the defendant checked the box for "[d]enying pretrial release."

¶ 13 The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant on appeal, and a memorandum in support of defendant's Rule 604(h) appeal was filed. On appeal, OSAD filed a memorandum with arguments directed to section 110-6.1(a) of

the Code (725 ILCS 5/110-6.1(a) (West 2022)) and argues that the State failed to meet its burden of proof to justify a denial of pretrial release, where it failed to prove the defendant posed a real and present safety threat and failed to present clear and convincing evidence that no set of pretrial conditions could mitigate any purported danger. The memo indicated that the defendant appealed from written orders entered following multiple hearings held pursuant to article 110 of the Code (*id.* art. 110), which was amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act. Additionally, the appellant filed a motion to supplement the record on appeal with missing transcripts from July 24, 2024, and August 7, 2024. The motion was taken with the case; we grant the motion to supplement.

¶ 14 II. ANALYSIS

¶ 15 The defendant's "motion for relief" cited the date of the review hearing held on August 7, 2024, which was a hearing pursuant to section 110-6.1(i-5) of the Code (725 ILCS 5/110-6.1(i-5) (West 2022)). The facts presented in the motion for relief included an address where the defendant could reside if he were released, the defendant's suffering from medical conditions that were not being properly managed in the jail, and the defendant's having family in the area. The defendant's motion did not mention the initial detention order of July 24, 2024. The defendant's notice of appeal indicated the date of the order on the motion for relief as September 12, 2024, and only listed September 12, 2024, as the date of hearing regarding pretrial release. In his memorandum on appeal, the defendant argues primarily that the circuit court erred in its initial detention determination by finding that the State met its burden to deny pretrial release pursuant to section 110-6.1(e) of the Code (*id.* § 110-6.1(e)), relating to the initial detention hearing. The memo does, however, indicate that it is challenging each detention order entered by the circuit court. The State argues that the defendant waived the arguments presented in the memorandum on appeal by not presenting them to the circuit court in a motion for relief pursuant to Rule 604(h).

¶ 16 While neither party challenges this court's jurisdiction, the dissenting justice would dismiss this appeal based on a perceived jurisdictional defect. We agree with our colleague that we have an independent duty to review our jurisdiction. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). The filing of a notice of appeal " 'is the jurisdictional step which initiates appellate review.' " *Id.* (quoting *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7 (1998)). Unless there is a properly filed notice of appeal, a reviewing court has no jurisdiction over the appeal and is obliged to dismiss it. *Id.*

¶ 17 While the notice of appeal is jurisdictional, it is generally accepted that such notice is to be construed liberally. *Id.* The purpose of a notice of appeal is to inform the prevailing party in the trial court that the other party seeks review of the judgment. *Id.* Thus, the notice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thereby advising the successful litigant of the nature of the appeal. *Id.* at 105. Where the deficiency in notice is one of form rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of notice is not fatal. *Id.* The dissent argues that the defendant's notice of appeal, listing only the circuit court's September 12, 2024, order denying his "motion for relief," does not confer this court with jurisdiction. The dissent maintains, and we agree, that Rule 604(h) does not provide for an appeal from the granting or denial of a motion for relief. We disagree, however, that "a notice of appeal pursuant to Rule 604(h) that identifies a

motion for relief and motion for relief hearing only does not confer jurisdiction to this court pursuant to Rule 604(h)." *Infra* ¶ 43. The dissent points out, and we agree, that the defendant's notice of appeal did not identify the order granting the State's petition to deny pretrial release entered on July 24, 2024, or the hearing regarding the same. Following an order of pretrial detention, at each subsequent appearance of the defendant in court, a circuit court "must conduct some review of the appropriateness of a defendant's continued detention." *People v. Harris*, 2024 IL App (2d) 240070, ¶ 37; 725 ILCS 5/110-6.1(i-5) (West 2022). The defendant requested to be heard on the issue of pretrial release at a subsequent hearing, and a hearing was held on September 12, 2024. The defendant's motion for relief identified the August 7, 2024, order entered pursuant to a section 110-6.1(i-5) hearing. Thus, while the dissent focuses on the initial detention order of July 24, 2024, the order at issue in this appeal is the circuit court's order of August 7, 2024. More importantly, the defendant utilized the form notice of appeal approved by our Illinois Supreme Court for Rule 604(h) appeals. Ill. S. Ct. Rs. Art. VI Forms Appendix R. 604(h) ("Defendant as Appellant"). That form requires a defendant to provide the "Date of Order on Motion for Relief." *Id.* The standardized form also requires a defendant to list "Date(s) of Hearing(s) Regarding Pretrial Release." There is no space on the standardized form that requires a defendant to list the date of the initial detention order when appealing a denial of pretrial release pursuant to a section 110-6.1(i-5) review. In fact, there is no requirement on the standardized notice of appeal form to list the date of any order other than the order on the motion for relief.

¶ 18 Unlike the dissent, we do not believe that dismissal for lack of jurisdiction is appropriate where the standardized notice of appeal form prescribed by our Illinois Supreme Court does not require the date of the order being appealed. The standardized notice of appeal also does not require the defendant to state the relief sought. We are confident that our Illinois Supreme Court was aware of the normal requirements for a notice of appeal and elected to omit those requirements. To find otherwise would be adding a requirement to the standardized notice of appeal, which our Illinois Supreme Court has indicated is sufficient to confer jurisdiction upon this court. Further, if this court was to apply the dissent's reasoning, we would lack jurisdiction over any Rule 604(h) appeal where the Illinois Supreme Court's standardized notice of appeal was utilized, since the standardized notice of appeal would always lack the date of the order appealed. As the defendant in this matter properly listed September 12, 2024, which was the date of the circuit court's order on his motion for relief as required by the standardized form, and the motion for relief cited the August 7, 2024, order continuing detention, we find we have jurisdiction to review this appeal.

¶ 19 Although we have determined that we have jurisdiction based on the above, we will briefly address the authority cited by the dissent. In support of its position, the dissent cites *People v. Ratliff*, 2024 IL 129356, for the proposition that " ' "[a] notice of appeal confers jurisdiction on an appellate court to consider only the judgments or parts of judgments specified in the notice." ' (Emphases omitted.)" *Id.* ¶ 17 (quoting *People v. Bingham*, 2018 IL 122008, ¶ 16, quoting *People v. Lewis*, 234 Ill. 2d 32, 37 (2009)). In *Ratliff*, the Illinois Supreme Court was addressing the reviewing court's jurisdiction to consider errors in the defendant's guilty plea where the defendant failed to file a motion to withdraw guilty plea, instead filing a motion to reconsider his sentence, ultimately determining that it did not. *Id.* ¶ 18. Notably, in *Ratliff*, the defendant's notice of appeal identified the order being appealed from as the circuit court's order denying his *motion to reconsider* his sentence, and not the sentencing order itself. *Id.*

Our Illinois Supreme Court indicated that the reviewing court had jurisdiction to review that order, presumably referring to the sentencing order. The appellate court, however, did not do so, and instead our Illinois Supreme Court found that it erred in reviewing the order entering judgment on the defendant's guilty plea. *Id.* We would find the holding in *Ratliff* inapposite, where our Illinois Supreme Court has made clear in its report of the Illinois Supreme Court Pretrial Release Appeals Task Force (Task Force) that pretrial detention appeals are to be a review of the trial court's decision and has acknowledged that the expedited process does not carry the same weight and scope of argument that is seen in a direct appeal following conviction. Ill. S. Ct. Pretrial Release Appeals Task Force, Report and Recommendations 7 (2024), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/628434e3-d07f-4ead-b1f6-4470d7e83bf3/Pretrial%20Release%20Appeals%20Task%20Force%20Report_March%202024.pdf [https://perma.cc/LL5Y-R4FN]. Unlike an appeal from a plea of guilty, pretrial detention appeals are interlocutory and expedited, and their procedural requirements are explained by Rule 604(h). Thus, the analysis of an appeal from a guilty plea and pretrial detention is not interchangeable.

¶ 20 As previously noted, no appeal was taken from the July 24, 2024, order, initially denying pretrial release. Instead, the defendant's "motion for relief" identified the circuit court's order of August 7, 2024, and the notice of appeal identified the order from the review hearing held on September 12, 2024. For relief from a review hearing held pursuant to section 110-6.1(i-5), the circuit court must assess whether "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." 725 ILCS 5/110-6.1(i-5) (West 2022). The defendant is required to make a showing of "new information or a change in circumstance." *Id.* § 110-5(f-5). The review of the initial detention decision against the change in circumstances or new information is a necessity in determining whether the defendant's detention remains appropriate. See *People v. Walton*, 2024 IL App (4th) 240541, ¶ 37.

¶ 21 The relevant portions of Rule 604(h) state as follows:

> "(h) Appeals From Orders Imposing Conditions of Pretrial Release, Granting or Denying a Petition to Deny Pretrial Release, or Revoking or Refusing to Revoke Pretrial Release.
>
> (1) Orders Appealable. An appeal may be taken to the Appellate Court from an interlocutory order of court entered under sections 110-5, 110-6, and 110-6.1 of the Code of Criminal Procedure of 1963 as follows:
>
> (i) by the State and by the defendant from an order imposing conditions of pretrial release;
>
> (ii) by the defendant from an order revoking pretrial release or by the State from an order denying a petition to revoke pretrial release;
>
> (iii) by the defendant from an order denying pretrial release; or
>
> (iv) by the State from an order denying a petition to deny pretrial release.
>
> (2) Motion for Relief. As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall

> promptly hear and decide the motion for relief. Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.
>
> * * *
>
> (7) Memoranda. The motion for relief will serve as the argument of the appellant on appeal. The appellant may file, but is not required to file, a memorandum not exceeding 4500 words, within 21 days of the filing of the record on appeal. Issues raised in the motion for relief are before the appellate court regardless of whether the optional memorandum is filed. If a memorandum is filed, it must identify which issues from the motion for relief are being advanced on appeal. Whether made in the motion for relief alone or as supplemented by the memorandum, the form of the appellant's arguments must contain sufficient detail to enable meaningful appellate review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities." Ill. S. Ct. R. 604(h)(1), (2), (7) (eff. Apr. 15, 2024).

¶ 22 It is well settled that the supreme court rules are not mere suggestions, and they have the force of law. *In re Denzel W.*, 237 Ill. 2d 285, 294 (2010). On August 29, 2024, the defendant filed a motion titled a "Motion to Reconsider Order Detaining Defendant Pretrial," instead of a "motion for relief." The motion failed to reference Rule 604(h)(2) or any other statute or supreme court rule. The body of the motion, *inter alia*, indicated where the defendant would live if released from custody, summarized his health condition, and indicated that he had family in the area. The defendant's motion failed to reference the legal standards for continued detention, or even initial detention, such as dangerousness and conditions of relief, while also failing to include any arguments aimed at those standards. The prayer for relief requested that the circuit court "reconsider" its order detaining the defendant pretrial. The defendant's motion cited no error from any hearing and no new evidence or information relating to pretrial release.

¶ 23 Here, the circuit court never clarified the precise nature of the issue before it, instead construing the motion to reconsider as a motion for relief, despite the motion bearing little resemblance to the same. The circuit court's decision to do so, without clarifying specifically which order the defendant was seeking relief from and on what basis, has resulted in an inadequate record before this court with no clear issues for this court to address. Even applying the most liberal construction, we would not consider the defendant's pleading to be a proper motion under Rule 604(h)(2). The motion contained no viable grounds for relief from the circuit court's orders on August 7, 2024, or September 12, 2024, as required by Rule 604(h)(2). Even if the defendant had titled his pleading as a motion for relief, the pleading was still not a proper motion for relief, where, as stated above, the contents of the motion were insufficient to comply with Rule 604(h)(2). See *In re Haley D.*, 2011 IL 110886, ¶ 67 ("we have emphasized that the character of the pleading should be determined from its content, not its label"); *People v. Green*, 2024 IL App (2d) 230094-U, ¶ 10 ("courts should look to what the pleading contains, not what it is called" (internal quotation marks omitted)).

¶ 24 After reviewing the defendant's pleading, the circuit court inquired of defense counsel if the pleading was intended to be a motion for relief, and defense counsel indicated that it was. The circuit court held a hearing on what was being considered by the circuit court and the

parties as a motion for relief. The circuit court ultimately denied the motion for relief, and the defendant remained in pretrial detention.

¶ 25 The Rule 604(h)(2) motion for relief is a procedural prerequisite to reaching the merits of an appeal. *People v. Cooksey*, 2024 IL App (1st) 240932, ¶ 17. The motion for relief is required to provide "the grounds" for the relief requested in the motion. Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024); *People v. Drew*, 2024 IL App (5th) 240697, ¶ 43. Further, the motion for relief must " 'contain sufficient detail to enable meaningful review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities.' " *Drew*, 2024 IL App (5th) 240697, ¶ 43 (quoting Ill. S. Ct. R. 604(h)(7) (eff. Apr. 15, 2024)). Even if we were to excuse the defendant's failure to cite any law or authority in his motion, none of its contents gave the circuit court the opportunity to review the claims the defendant has raised on appeal.

¶ 26 "[A] reviewing court is not simply a depository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56. This is because a reviewing court "cannot be expected to formulate an argument for defendant out of whole cloth." *People v. Inman*, 2023 IL App (4th) 230864, ¶ 13. The Task Force was mindful of this concept when making the recommendation to the Illinois Supreme Court that a motion in the circuit court be a prerequisite to an appeal. Specifically on this issue, the Task Force's report stated:

> "We believe that this rule is essential to discourage the boilerplate 'arguments' we have seen in the existing check-the-box notice of appeal. We remain ever mindful that, as appellate judges, we may not serve as advocates for a party. Presentation of the appellant's argument in a cursory manner pressures the court to abandon the role it is ethically obligated to play: that of a neutral arbiter." Ill. S. Ct. Pretrial Release Appeals Task Force, Report and Recommendations 8 (2024), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/628434e3-d07f-4ead-b1f6-4470d7e83bf3/Pretrial%20Release%20Appeals%20Task%20Force%20Report_March%202024.pdf [https://perma.cc/LL5Y-R4FN].

¶ 27 The motion for relief establishes the arguments that may be presented on appeal. "Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived." Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). In this matter, OSAD filed a memorandum that argued grounds for relief; however, those grounds were not contained in the defendant's motion for relief. An appellate memorandum filed by OSAD cannot circumvent the rules and frame issues on appeal where the arguments were not advanced in the motion for relief in the circuit court. *Drew*, 2024 IL App (5th) 240697, ¶ 44; *People v. Nettles*, 2024 IL App (4th) 240962, ¶ 20.

¶ 28 Where the defendant fails to properly place the arguments advanced on appeal before the circuit court, this court cannot review the judgment as to those issues. A standard of review, such as manifest weight of the evidence or abuse of discretion, cannot be applied if there are no arguments properly before either the lower court or this court to be addressed. Courts have continuously held that dismissal is proper for failure to comply with supreme court rules. See generally *People v. Duckworth*, 2024 IL App (5th) 230911, ¶¶ 8-9 (appeal dismissed where the defendant failed to comply with the requirement of Rule 604(h)); *People v. Robinson*, 2021 IL App (4th) 200515, ¶ 11 ("A defendant's failure to comply with the rule does not deprive us of jurisdiction, but it does preclude us from considering the appeal on the merits, requiring

dismissal instead."); *People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006) (it is within the court's discretion to dismiss appeal for failure to comply with supreme court rule); *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 20 ("Although we seldom enter an order dismissing an appeal for failure to comply with supreme court rules, our sound discretion permits us to do so.").

¶ 29 We agree with our colleagues in *Nettles*, 2024 IL App (4th) 240962, ¶ 21, that under circumstances such as these, the "proper path forward is to dismiss [the] defendant's appeal." While the failure to file the appropriate pleading is not a jurisdictional bar (*Cooksey*, 2024 IL App (1st) 240932, ¶ 19), the defect requires dismissal of the appeal. *Nettles*, 2024 IL App (4th) 240962, ¶ 21. This court, as our colleagues did in *Nettles*, agrees with the analysis in *Cooksey*, that the failure to file a proper Rule 604(h) motion for relief precludes us from considering the merits of the appeal and necessitates dismissal. *Id.* (citing *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003)).

¶ 30 The Task Force's report specifically recommended the provision in Rule 604(h)(2) as a means to give the circuit court the opportunity to correct errors, crystallize the issues being raised in the circuit court, streamline the appeal process, and make explicit the rules regarding issue preservation. Ill. S. Ct. Pretrial Release Appeals Task Force, Report and Recommendations 5-7 (2024), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/628434e3-d07f-4ead-b1f6-4470d7e83bf3/Pretrial%20Release%20Appeals%20Task%20Force%20Report_March%202024.pdf [https://perma.cc/LL5Y-R4FN]. As the motion filed by the defendant failed to identify any error in the August 7, 2024, hearing, listed in his motion as the order he sought to be "reconsidered," and failed to crystallize the issues being raised in the circuit court, in our view, it was synonymous with filing no motion at all. As such, we must dismiss the appeal where the failure to file the Rule 604(h)(2) motion precludes us from reaching the merits of the defendant's appeal. *Nettles*, 2024 IL App (4th) 240962, ¶ 21 (citing *Flowers*, 208 Ill. 2d at 300-01); *People v. Foster*, 171 Ill. 2d 469, 470 (1996).

¶ 31 III. CONCLUSION

¶ 32 We find that the defendant's motion does not constitute a motion for relief as contemplated under Rule 604(h)(2), and thus, where there remain no issues for this court to review that have not been waived by the defendant's failure to include them in his motion for relief, dismiss this matter for failure to comply with Rule 604(h)(2).

¶ 33 Appeal dismissed.

¶ 34 JUSTICE MOORE, dissenting:

¶ 35 Respectfully, I dissent from the majority's opinion. After carefully reviewing the record, it is my opinion that this court lacks jurisdiction to consider this appeal. Neither party has raised the issue of jurisdiction in their memoranda; however, "a reviewing court has an independent duty to consider *sua sponte* issues of jurisdiction." *People v. Ratliff*, 2024 IL 129356, ¶ 15.

¶ 36 It is well settled in both "civil and criminal cases, that no appeal lies from an interlocutory order in the absence of a statute or rule specifically authorizing such review." *People v. Miller*, 35 Ill. 2d 62, 67 (1966). Illinois Supreme Court Rule 604(h) (eff. Apr. 15, 2024) was created, and amended several times, to address specific interlocutory appeals stemming from the

enactment of Public Act 101-652 (eff. Jan. 1, 2023). See *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (vacating the stay of the pretrial release provisions in Public Act 101-652 on September 18, 2023).

¶ 37 The relevant portions of Rule 604(h) provide:

> "(1) Orders Appealable. An appeal may be taken to the Appellate Court from an interlocutory order of court entered under sections 110-5, 110-6, and 110-6.1 of the Code of Criminal Procedure of 1963 as follows:
>
> (i) by the State and by the defendant from an order imposing conditions of pretrial release;
>
> (ii) by the defendant from an order revoking pretrial release or by the State from an order denying a petition to revoke pretrial release;
>
> (iii) by the defendant from an order denying pretrial release; or
>
> (iv) by the State from an order denying a petition to deny pretrial release.
>
> (2) Motion for Relief. As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall promptly hear and decide the motion for relief. Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.
>
> (3) Notice of Appeal; Time; Docketing Statement; Fee. After disposition of its motion for relief in the trial court, a party may initiate an appeal by filing a notice of appeal in the circuit court at any time prior to conviction. No docketing statement is required.
>
> If the defendant is represented by court-appointed counsel, the clerk of the reviewing court shall docket the appeal and accept documents for filing without the payment of the appellate court filing fee." Ill. S. Ct. R. 604(h)(1), (2), (3) (eff. Apr. 15, 2024).

¶ 38 Recently, our supreme court issued an opinion regarding, *inter alia*, jurisdiction, as well as waiver, as provided for in a sister section of Rule 604. Regarding jurisdiction and a notice of appeal, the court found:

> "Rule 303(b)(2), which governs civil appeals, provides that the notice of appeal 'must specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court.' Ill. S. Ct. R. 303(b)(2) (eff. July 1, 2017). This court has similarly observed, 'In criminal cases, "[a] notice of appeal confers jurisdiction on an appellate court to consider only the judgments or parts of judgments specified in the notice." ' (Emphases omitted.)" *Ratliff*, 2024 IL 129356, ¶ 17 (quoting *People v. Bingham*, 2018 IL 122008, ¶ 16, quoting *People v. Lewis*, 234 Ill. 2d 32, 37 (2009)).

¶ 39 In the present appeal, the defendant utilized the form notice of appeal approved for Rule 604(h) appeals with the defendant as the appellant. The defendant's notice of appeal identified only the motion for relief and the hearing held on September 12, 2024, regarding the motion for relief. The notice of appeal did not identify the order granting the State's petition to deny pretrial release entered on July 24, 2024, the hearing regarding same, or the hearing and order regarding continued detention entered on August 7, 2024.

¶ 40 Rule 604(h) has been amended several times as the law continues to evolve regarding Public Act 101-652. As presently written, Rule 604(h) does not provide for an appeal from the granting or denial of a motion for relief. What it does provide is that when a party wishes to appeal one of the specific interlocutory orders identified by Rule 604(h)(1), it must file a motion for relief. That motion for relief is to be a stepping stone to the reviewing court and is not intended to create new issues on review. To the extent that an error occurs at the motion for relief hearing, Rule 604(h) does not currently state how such an error should be raised.

¶ 41 The defendant's motion for relief did not mention either the initial detention hearing or detention order of July 24, 2024. The motion for relief is intended to establish the issues that may be raised in a 604(h) appeal. The notice of appeal filed by the defendant also failed to identify either the initial detention hearing or detention order of July 24, 2024. While I agree with the majority that a notice of appeal is to be liberally construed, in order for a notice of appeal to be deemed sufficient to confer jurisdiction on an appellate court, it must fairly and adequately set forth the order complained of. *People v. Smith*, 228 Ill. 2d 95, 105 (2008). Like in *Smith*, the defendant's notice of appeal in this case, no matter how liberally construed, cannot be said to have fairly and adequately set forth the order and hearing complained of when it specifically mentioned a different hearing and order of September 12, 2024. See *id.* Even if we were to liberally construe the notice of appeal along with the motion for relief, these documents combined would still not advise that the hearing and order complained of occurred on July 24, 2024.

¶ 42 The present matter is filled with uncertainty due, in part, to an inadequate notice of appeal. The majority finds that "no appeal was taken from the July 24, 2024, order, initially denying pretrial release" and that the order being appealed from is the order of August 7, 2024. *Supra* ¶ 20. However, the memorandum for defendant-appellant filed by OSAD repeatedly makes arguments regarding the July 24, 2024, hearing and order, as well as the August 7, 2024, hearing and order. This is precisely the problem with the notice of appeal—we cannot, without speculating or advocating for the defendant, determine what the defendant intended to appeal.

¶ 43 The latest amendments to Rule 604(h) were an attempt to streamline the appellate process related to pretrial detention; unfortunately, we are now faced with new challenges. I would find that a notice of appeal pursuant to Rule 604(h) that identifies a motion for relief and motion for relief hearing only does not confer jurisdiction to this court pursuant to Rule 604(h) to review an entirely different hearing and order. Accordingly, I would dismiss the present appeal based upon a lack of appellate jurisdiction.

¶ 44 However, assuming *arguendo* we had jurisdiction, I disagree with the majority's dismissal of the appeal and would affirm based upon waiver. While I agree with the majority that this court has the authority to dismiss an appeal for failure to comply with supreme court rules, in exercising our discretion, case law notes that "we seldom enter an order dismissing an appeal for failure to comply with supreme court rules." *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 20.

¶ 45 I also agree with the majority that a motion for relief is a procedural prerequisite. Further, I agree that the motion for relief must " 'contain sufficient detail to enable meaningful review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities.' " *People v. Drew*, 2024 IL App (5th) 240697, ¶ 43 (quoting Ill. S. Ct. R. 604(h)(7) (eff. Apr. 15, 2024)).

¶ 46 As stated above, our supreme court, in *Ratliff*, recently analyzed the requirements of Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) and the consequence of failing to meet those requirements. Rule 604(d) is similar to Rule 604(h) in that both require a motion in the circuit court before an appeal is allowed.

¶ 47 Rule 604(d) provides:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024).

Further, the rule provides that "[t]he motion shall be in writing and shall state the grounds therefor" and that "[u]pon appeal[,] any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." *Id.*

¶ 48 The supreme court set forth similar requirements for appeals under Rule 604(h). The motion for relief must be in writing. Ill. S. Ct. R. 604(h) (eff. Apr. 15, 2024). The motion for relief "must contain sufficient detail to enable meaningful appellate review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities." *Id.* Any issue not raised in the motion for relief "shall be deemed waived." *Id.*

¶ 49 The *Ratliff* court found that the language of Rule 604(d) was "unmistakably clear," and any issue not raised in the required motion was waived, not forfeited. *Ratliff*, 2024 IL 129356, ¶ 26. In *Ratliff*, after considering the jurisdictional issue, the court found that the defendant waived an issue on appeal by failing to include it in a written motion as required by the rule and thus affirmed the order of the circuit court. As the supreme court affirmed based on waiver, I would do the same in this case. If we had jurisdiction, I would find the defendant waived the arguments he attempted to make in his memorandum by failing to include them in the written motion under Rule 604(h), and based on this waiver, the order of the circuit court should be affirmed.