

¶ 4 On December 18, 2023, the State charged defendant with one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2022)) and one count of driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2022)). That same day, the State filed a verified petition to deny defendant pretrial release, alleging defendant was charged with a qualifying offense and had a high likelihood of willful flight to avoid prosecution (725 ILCS 5/110-6.1(a)(8)(B) (West 2022)). At the detention hearing, the State proffered the following in support of its petition to deny defendant pretrial release.

¶ 5 According to the State, on December 17, 2023, at approximately 6 p.m., Illinois State Police observed an unconscious person in the driver's seat of a vehicle that had travelled off the roadway and down the embankment alongside Interstate 55. Defendant was the sole occupant, and police determined defendant's driver's license had been revoked since 2009. Defendant told police someone else had been driving, but police observed the vehicle was so "full of property" that it would be impossible for another passenger to fit inside the vehicle. Defendant did not indicate where he came from or how the car ended up in the ditch. Defendant told officers he would contact his "Aunt Jen" and let her know he had her vehicle. Police then observed defendant send text messages to an "unknown party," asking them to contact the police and falsely identify themselves as defendant's aunt. Police contacted the vehicle's owner, Jennifer Hendricks, who indicated that she left her vehicle at a body shop in Decatur, Illinois, where it had been stolen, and no one was authorized to use it.

¶ 6 In support of its petition, the State emphasized the strength of its case and pointed out the vehicle defendant was found to be in possession of was stolen in Macon County before defendant was apprehended in McLean County. The State also highlighted defendant's criminal history. Defendant had numerous prior convictions, including a North Carolina conviction for

forgery and Illinois convictions for driving under the influence, unlawful possession of a firearm, unlawful restraint, domestic battery, driving while his license was suspended, and driving while his license was revoked. Defendant failed to comply with previous terms of probation. At the time of the present offenses, defendant was on pretrial release and had seven felony cases across multiple counties pending against him for possession of a weapon by a felon, possession of a stolen motor vehicle, theft, forgery, and three burglaries. The State also noted defendant scored a six out of six possible points on the “New Criminal Activity Scale” and a five out of six possible points on the “Failure to Appear Scale,” which indicated a “very high” likelihood defendant would flee.

¶ 7 Defense counsel argued defendant was a 37-year-old father of three daughters. Defendant was employed and had custody of his children during weekends. He was also a “caretaker” for his friend, Jennifer Rapp. Defense counsel asserted defendant successfully completed terms of court supervision, probation, and mandatory supervised release in the past. Defense counsel also proffered that, if called to testify, defendant would state that Rapp had actually been driving the vehicle when it ran out of gas. Rapp then parked the vehicle, gave defendant the keys, and left to get gasoline. Defendant claimed he had been in the vehicle for two hours before police arrived. He also claimed the text message he sent was not asking someone to pretend to be the owner of the vehicle. Rather, he was asking them to notify Rapp.

¶ 8 In determining whether defendant should be released from pretrial detention, the circuit court recognized the State’s burden to show, by clear and convincing evidence, the proof is evident or the presumption great that defendant committed one or more felony offenses, Class 3 or greater, and no less restrictive release conditions would adequately mitigate the high likelihood of defendant’s willful flight. The court then noted the Code’s definition of willful

flight and pointed out that “sometimes the best way to determine what someone will do is to look at what that person has done.” The court observed the seven pending cases across multiple counties against defendant. And after considering defendant’s “multiple prior failures to appear in court” and his “high” score on the “Failure to Appear Scale,” the court found “a high likelihood *** defendant would either not reliably or voluntarily appear in court.” The court also noted defendant’s willingness to solicit a third party to pretend to be the stolen vehicle’s owner in an attempt to mislead police could constitute “intentional conduct designed to thwart the judicial process to avoid prosecution.” Further, given defendant’s conduct, the court believed there was a “high likelihood that [defendant] would attempt to manufacture evidence suggesting that he is somehow not the person who was involved in either stealing the vehicle or driving it.” Ultimately, the court found no less restrictive release conditions would adequately ensure defendant’s appearance or prevent him from being charged with another offense. In so finding, the court considered the nature and circumstances of the offenses, the strength of the State’s proffered evidence, defendant’s criminal history, his history of repeatedly violating conditions of his pretrial release, and his attempt to manufacture false evidence in order to frustrate the efforts of law enforcement.

¶ 9 Following the detention hearing, the circuit court entered its written order indicating that it found detention appropriate based on willful flight grounds. In summarizing its reasons for denying defendant pretrial release, the court noted defendant was unlikely to appear voluntarily and comply with release conditions given (1) the text message defendant sent to an unknown person inducing them to contact police and pretend to be the stolen vehicle’s owner, (2) defendant’s “multiple prior failures to appear,” and (3) his “high failure-to-appear score on [the] Public Safety Assessment.” The court’s order also noted defendant had a history of

disobeying court orders and release conditions, and the court found less restrictive conditions would not ensure defendant's appearance given the fact he committed the instant offenses while having seven separate felony cases pending against him.

¶ 10 After the court entered its written order summarizing its reasons for denying pretrial release, defendant filed a notice of appeal pursuant to Illinois Supreme Court Rule 604(h)(2) (eff. Dec. 7, 2023).

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant's notice of appeal is a completed form from the Article VI Forms Appendix to the Illinois Supreme Court Rules (see Ill. S. Ct. R. 606(d) (eff. Dec. 7, 2023)), by which he requests pretrial release with conditions. The form lists several possible grounds for appellate relief and directs appellants to "check all that apply and describe in detail." Defendant checked two grounds for relief and wrote sentences on the preprinted lines to support his claims.

¶ 14 The first ground for relief defendant checked alleged the following: "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." On the preprinted lines, defendant asserted the court "found that less restrictive means would be ineffective because he has a history of disobeying court orders. However, Defense proffered evidence that [defendant] successfully completed court supervision, probation, and parole in the past." Defendant's form notice also alleged "Other" grounds for relief, namely that the "Court indicated it believe[d] [defendant] would manufacture evidence. This is concerning because the statement goes beyond the scope of the hearing, which is the specific, articulable facts of the offense."

¶ 15 The Office of the State Appellate Defender, defendant’s appointed counsel on appeal, filed a Rule 604(h) memorandum laying out the reasons for reversing the circuit court’s decision. Defendant’s memorandum also raised a third argument not presented in defendant’s notice of appeal: the court “erred in concluding that [defendant] had a high likelihood of willful flight based on his proffered attempt to induce a third-party witness to lie to police about ownership of the car prior to arrest, where suborning perjury is not ‘willful flight’ within the meaning of the Pretrial Fairness Act, and where the same tactic would offer no benefit at trial.”

¶ 16 Initially, we note defendant has forfeited the argument raised in the memorandum but not raised in the notice of appeal. Ill. S. Ct. R. 604(h)(2) (eff. Dec. 7, 2023) (“The Notice of Appeal shall describe the relief requested and the grounds for the relief requested.”); see *People v. Martin*, 2023 IL App (4th) 230826, ¶¶ 18-19. While forfeiture is not a limitation on this court’s discretionary ability to review an otherwise forfeited issue (*People v. Curry*, 2018 IL App (1st) 152616, ¶ 36, 100 N.E.3d 482), we decline to excuse defendant’s forfeiture here. Thus, we will not address defendant’s claim raised solely in his memorandum, and we turn next to the arguments defendant raised in his notice of appeal.

¶ 17 All criminal defendants are presumed eligible for pretrial release. 725 ILCS 5/110-6.1(e) (West 2022). As relevant here, before denying pretrial release, the State must prove by clear and convincing evidence that “no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate *** the defendant’s willful flight.” 725 ILCS 5/110-6.1(e)(3)(ii) (West 2022). In determining which pretrial release conditions, “if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release,” the circuit court must consider the nature and circumstances of the

offense charged; the weight of the evidence against the defendant; the history and characteristics of the defendant; the nature and seriousness of the specific, real, and present threat to any person that would be posed by the defendant's release; and the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. 725 ILCS 5/110-5(a)(1)-(5) (West 2022). The statute lists no singular factor as dispositive. See 725 ILCS 5/110-5(a) (West 2022).

¶ 18 If the circuit court determines the defendant should be denied pretrial release, the court must make written findings summarizing the reasons for denying pretrial release, including why less restrictive conditions would not prevent the defendant's willful flight from prosecution. 725 ILCS 5/110-6.1(h)(1) (West 2022). In determining compliance with the directives of the statute, the court's oral findings may be considered in conjunction with the written order. See *People v. Hodge*, 2024 IL App (3d) 230543, ¶ 11 (holding that, considering both the transcript of the hearing and the court's written order, the court's reasons for its detention findings were adequately stated to allow the appellate court to fully consider its decision); see also *In re Madison H.*, 215 Ill. 2d 364, 374-75, 830 N.E.2d 498, 505 (2005) (holding that an oral finding on the record may satisfy the statutory requirement that the court put the factual basis for its finding of dispositional unfitness in writing if the oral finding is explicit and advises the parties of the basis for the court's decision).

¶ 19 We have held the determination of whether pretrial release should be granted or denied is reviewed under an abuse-of-discretion standard. See *People v. Jones*, 2023 IL App (4th) 230837, ¶¶ 27, 30. "An abuse of discretion occurs when the circuit court's decision is arbitrary, fanciful or unreasonable or where no reasonable person would agree with the position adopted by the [circuit] court." (Internal quotation marks omitted.) *People v. Simmons*, 2019 IL

App (1st) 191253, ¶ 9, 143 N.E.3d 833. Under this standard, a reviewing court will not substitute its own judgment for that of the circuit court simply because it would have analyzed the proper factors differently. *People v. Inman*, 2023 IL App (4th) 230864, ¶ 11. Likewise, “we will not substitute our own judgment for the trier of fact on issues regarding the weight of the evidence or the credibility of witnesses.” *People v. Vega*, 2018 IL App (1st) 160619, ¶ 44, 123 N.E.3d 393.

¶ 20 Here, defendant has not shown how the circuit court abused its discretion in determining that no condition or combination of conditions would reasonably ensure his appearance or prevent him from being charged with a subsequent offense. The record demonstrates the court carefully considered the nature and circumstances of the offenses (725 ILCS 5/110-5(a)(1) (West 2022)); the strength of the State’s proffered evidence against defendant (725 ILCS 5/110-5(a)(2) (West 2022)); defendant’s criminal history across multiple states, including the seven felony cases pending against him (725 ILCS 5/110-5(a)(3) (West 2022)); defendant’s penchant for amassing new offenses while on pretrial release, as well as his history of repeatedly violating conditions of his pretrial release (725 ILCS 5/110-5(a)(3)(B) (West 2022)); and defendant’s “multiple prior failures to appear in court” along with his attempt to manufacture false evidence in order to frustrate the efforts of law enforcement (725 ILCS 5/110-5(a)(5) (West 2022)). Accordingly, because the court complied with the Code’s requirements and made the necessary findings, we cannot say its determination that no condition short of detention would ensure defendant’s appearance or prevent him from being charged with another offense was arbitrary, fanciful, or unreasonable. See *Inman*, 2023 IL App (4th) 230864, ¶ 10.

¶ 21 Finally, defendant’s statement in the “Other” category that the circuit court’s belief he “would manufacture evidence” based on his attempt to mislead police somehow went

“beyond the scope of the hearing” is patently wrong. A defendant’s character, conduct, and the nature and seriousness of the risk of attempting to obstruct the criminal justice process posed by a defendant’s release are appropriate considerations in determining conditions of release. See 725 ILCS 5/110-5(a)(3)(A), (5) (West 2022).

¶ 22 In short, the record supports the circuit court’s determination that no conditions or combination thereof would ensure defendant’s appearance or prevent him from being charged with another offense. Thus, the decision was not arbitrary, fanciful, or unreasonable. There was no abuse of discretion. *Inman*, 2023 IL App (4th) 230864, ¶ 10.

¶ 23 III. CONCLUSION

¶ 24 For all these reasons, we affirm the circuit court’s judgment.

¶ 25 Affirmed.