

NOTICE  
Decision filed 01/26/24. 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.

2024 IL App (5th) 231182-U

NO. 5-23-1182

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Champaign County.
	)	
v.	)	No. 23-CF-1441
	)	
DREW C. HESTER,	)	Honorable
	)	Brett N. Olmstead,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BOIE delivered the judgment of the court.  
Presiding Justice Vaughan and Justice McHaney concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We grant the State’s motion to dismiss and dismiss the defendant’s appeal for failure to state the grounds for the relief requested.
- ¶ 2 This matter comes before this court on the State’s motion to dismiss. On November 21, 2023, the defendant, Drew C. Hester, filed a timely notice of appeal of the November 17, 2023, order of the circuit court of Champaign County granting the State’s petition for pretrial detention and ordering him detained. On December 7, 2023, the State filed a motion to dismiss the defendant’s appeal arguing that the defendant’s notice of appeal failed to comply with Illinois Supreme Court Rule 604(h)(2). The defendant did not file a response to the State’s motion and the time for doing so has expired.

¶ 3 Pretrial release is governed by 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> as codified in article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Code); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). The defendant timely appealed utilizing the Notice of Pretrial Fairness Act Appeal 604(h) (Defendant as Appellant) standardized form provided by the Illinois Supreme Court on November 21, 2023. Ill. S. Ct. R. 604(h)(2) (eff. Oct. 19, 2023).

¶ 4 Utilizing the notice of appeal form approved for Rule 604(h) appeals, the defendant requests this court “[t]o reverse the trial court’s order denying [d]efendant pretrial release” as relief. The defendant’s claims of error consist of four checked boxes on the six-page form, asserting: (1) “[t]he State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offense(s) charged”; (2) “[t]he State failed to meet its burden of proving by clear and convincing evidence that defendant poses 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”; (3) “[t]he State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions can mitigate the 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 defendant’s willful flight”; and (4) “[t]he 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

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

subsequent felony or Class A misdemeanor.” On the additional space provided for elaboration on each of the contentions, the defendant failed to make any specific argument in support of his claims and left the additional space blank.

¶ 5 The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant in this appeal and, as noted above, did not file a response to the State’s motion to dismiss. Instead, OSAD filed a notice “In Lieu of Rule 604(h) Memorandum.” In the notice, OSAD stated, (1) defendant was appealing from the written order entered following the pretrial detention hearing, (2) jurisdiction was proper, and (3) “[u]pon review of the record on appeal, Defendant-Appellant will not file a Rule 604(h) memorandum.” We note that under Illinois Supreme Court Rule 604(h)(2) (eff. Oct. 19, 2023), a supporting memorandum is not required.

¶ 6 The State’s motion to dismiss argues that the defendant’s notice of appeal does not comply with the requirements of Rule 604(h)(2), citing the recent case of *People v. Inman*, 2023 IL App (4th) 230864. The State also argues that the defendant should not be allowed to correct this deficiency by filing a memorandum in support of his notice of appeal. Courts have held, however, that a notice of appeal, in conjunction with a memorandum, is sufficient if it informs the opposing party of the relief requested and the grounds for the relief requested. *People v. Wetzel-Connor*, 2023 IL App (2d) 230348-U, ¶ 20 (defendant did not elaborate upon his grounds for requested relief in notice of appeal but opted to file a memorandum describing those grounds, thus, the court and the State were in receipt of the defendant’s grounds for requested relief); *People v. Stewart*, 2024 IL App (4th) 230839-U, ¶ 12 (“notice of appeal was sufficient to put defendant on notice of what the State was appealing, and the State did file a memorandum explaining its contentions of error”); see also *People v. Duckworth*, 2024 IL App (5th) 230911, ¶ 8 (notice of appeal sufficient to confer jurisdiction, but defendant’s counsel declined opportunity to file a memorandum and provide the missing argument, citation of the record, or authority that would have supported any

argument that could have been made for the issues raised in the notice of appeal). As such, any argument regarding the sufficiency of a notice of appeal is premature until such time as the opposing party has filed a memorandum or the time for filing a memorandum has expired.

¶ 7 In this matter, shortly after the State filed its motion to dismiss, OSAD filed a notice “In Lieu of Rule 604(h) Memorandum” indicating that the defendant would not file a Rule 604(h) memorandum. As such, we can proceed with the State’s motion to dismiss although the time for the State to file a memorandum has not expired.

¶ 8 The defendant’s notice of appeal offers no explanation or argument whatsoever relating to his various claims indicated by checked boxes. “Rule 604(h) requires the notice of appeal to include a description of the relief to be requested ‘*and the grounds for the relief requested.*’ ” (Emphasis in original.) *Inman*, 2023 IL App (4th) 230864, ¶ 12 (quoting Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023)). Accordingly, “some form of argument is required, along with justification for claiming entitlement to relief—like references to the record, the evidence presented, or, if possible, legal authority.” *Id.* A reviewing court cannot be expected to formulate an argument for the defendant out of whole cloth. *Id.* ¶ 13. “The appellate court is not a depository in which the appellant may dump the burden of argument and research.” *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5.

¶ 9 Therefore, we find that the defendant failed to comply with the requirement of Rule 604(h)(2) that requires the defendant to specify the grounds for the relief requested. Merely checking the boxes on the notice of appeal form without making any specific argument, specific reference to the record, and/or citing legal authority is deficient. We further find that since no grounds for relief were provided, any potential arguments regarding the defendant’s claims of error

are forfeited pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 19, 2023) (“Points not argued are forfeited \*\*\*.”). Therefore, we grant the State’s motion and dismiss the defendant’s appeal.

¶ 10 Motion granted; appeal dismissed.