Illinois Official Reports

Appellate Court

People v. Earnest, 2024 IL App (2d) 230390

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROYCE D. EARNEST, Defendant-Appellant.
District & No.	Second District No. 2-23-0390
Filed	January 23, 2024
Decision Under Review	Appeal from the Circuit Court of Lake County, Nos. 22-CF-157, 23-CF-266, 23-CF-938; the Hon. James K. Booras, Judge, presiding.
Judgment	Order vacated; cause remanded.
Counsel on Appeal	James E. Chadd, Carolyn R. Klarquist, and Abigail Hogan Elmer, 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 JORGENSEN delivered the judgment of the court, with opinion. Justices Hutchinson and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Royce D. Earnest, requests that we vacate the circuit court's order granting the State's verified petition to deny him pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code), as amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act).[1] See 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). Specifically, defendant contends that the State lacked the authority to petition for his detention and that the circuit court improperly detained him based on an inadequate proffer by the State, without considering whether any condition or combination of conditions would mitigate his risk of flight and without providing defendant the opportunity to be heard. For the following reasons, we vacate the order for detention and remand for a new hearing.[2]

¶ 2 I. BACKGROUND

¶ 3 On February 12, 2023, defendant was charged in Lake County case No. 23-CF-266 for attempted possession of a controlled substance (720 ILCS 570/402(c) (West 2022)), use of an electronic communication device while driving (625 ILCS 5/12-610.2(b) (West 2022)), and possession of more than 5 grams but less than 15 grams of methamphetamine (720 ILCS 646/60(a) (West 2022)). At the time he was charged, he was on probation for possession of a controlled substance (720 ILCS 570/402(c) (West 2022)) in case No. 22-CF-157. After he was charged in case No. 23-CF-266, he was arrested for aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2022)), resisting a peace officer (720 ILCS 5/31-1(a)(1) (West 2022)), driving 21 to 25 miles per hour above the limit (625 ILCS 5/11-601(b) (West 2022)), and use of an electronic communication device while driving (*id.* § 12-610.2(b)) in May 2023 in case No. 23-CF-938.[3]

¶ 4 Defendant was incarcerated in the Lake County jail but ordered released with the condition of a $200,000 bond. On September 21, 2023 (three days after the Act became effective), defendant, who remained detained, moved pursuant to sections 110-7.5(b) and 110-5 of the Code (725 ILCS 5/110-7.5(b), 110-5 (West 2022)), as amended by the Act, for a hearing to remove the financial surety as a prerequisite for his release. He stated that he was unable to post the bond previously set and his requirement to pay a financial surety was the sole basis for his continued detention. He averred that he was entitled to a hearing and release from

[1]The Act is also commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act.

[2]Pursuant to Illinois Supreme Court Rule 604(h)(5) (eff. Dec. 7, 2023), our decision in this case was due on or before January 16, 2024, absent a finding of good cause for extending the deadline. Based on the high volume of appeals under the Act currently under the court's consideration, as well as the complexity of issues and the lack of precedential authority, we find there to be good cause for extending the deadline. *People v. Duckworth*, 2024 IL App (5th) 230911.

[3]All information was obtained from the Lake County clerk's website, as the parties cited conflicting charges and the record on appeal did not include all the superseding charging instruments. Ill. R. Evid. 201 (eff. Jan. 1, 2011) (judicial notice of adjudicative facts).

custody with any conditions the court deemed appropriate, because the court had already ordered his release on the condition of posting monetary bond.

¶ 5 Six days later, the State filed a verified petition to detain, arguing that the charges in case Nos. 23-CF-266 and 23-CF938 were detainable offenses pursuant to section 110-6.1 of the Code (*id.* § 110-6.1) and that defendant posed a real and present threat to the safety of any person or the community and he posed a high likelihood of willful flight to avoid prosecution. Further, the State alleged pursuant to section 110-10(b) (*id.* § 110-10(b)) that no condition or combination of conditions could mitigate the risks to any person or the community or defendant's risk of willful flight. That same day, defendant moved to strike the State's petition, arguing that the petition was untimely and that no provision of article 110 of the Code authorized the State to file a petition to detain a person not previously granted pretrial release.

¶ 6 On October 2, 2023, the circuit court held a hearing, first addressing defendant's motion to strike. Defendant argued that the State's petition to detain was untimely since more than 21 days had passed since his arrest. He also asserted that he had not been arrested for any of the enumerated detainable offenses under the Act's dangerousness standard. The State conceded this point, and the dangerousness argument was stricken. The court then found that the State's petition was timely because the Act had just become effective.

¶ 7 The court then proceeded with the State's petition to detain. The State noted "for context" that there was an underlying petition to revoke defendant's probation in case No. 22-CF-157 because defendant had been subsequently charged in case No. 23-CF-266. It asserted, twofold, that it was seeking to revoke because of defendant's subsequent arrests or, alternatively, detain defendant because there was a risk of flight evidenced by case No. 23-CF-938, where defendant fled on foot after leading police on a vehicle chase. Defense counsel objected to the State's request for relief based on an alleged violation of probation without "additional filings by the State" and, instead, asserted that the only proper issue before the court was the State's petition to detain based on the risk of willful flight.

¶ 8 The court found that it could *sua sponte* detain defendant "in a situation where the defendant is on probation and gets arrested for a Class A or greater [offense]." Additionally, the court determined that, based on the State's proffer, defendant's running from police officers, his previous failures to appear, and the fact that he was on probation and incurred new felony offenses, it would detain defendant due to his risk of willful flight. The court also concluded that the evidence and presumption were great that defendant committed the alleged offenses, there was no condition or combination of conditions that would mitigate the threat defendant posed to the community, and there were specific and articulable facts that indicated that defendant would engage in willful flight from prosecution.

¶ 9 Repeatedly, defense counsel noted that the violation of probation was not addressed in the petition to detain; the court had not been given a proffer on the State's petition regarding the facts supporting detention, the applicable law, or the willfulness standard; and the State had not filed anything in this case regarding the alleged violation of probation. Moreover, counsel addressed the court's failure to hear a proffer by the defense before issuing its ruling. Overall, the court concluded that the State's petition, in combination with defendant's violation of probation, supported detention. The court entered a written order reflecting that defendant was ordered detained because of his risk of willful flight. Counsel's motion pursuant to section 110-5 was never addressed.

¶ 10 On October 12, 2023, defense counsel filed a notice of appeal and a written addendum describing in detail defendant's claims of error. Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023). Therein, defendant argued that the State did not provide him with any notice or materials regarding the evidence it would rely on at the detention hearing. He asserted that the State's proffer supporting detention did not address the willful-flight standard, which was, ultimately, the standard under which the State sought detention. Moreover, he averred that the State failed to meet its burden of proving that defendant committed the charged offenses; he posed a threat to any person or the community; and there was no condition or combination of conditions that would mitigate his threat to any person, the community, or his risk of willful flight. Additionally, he contended that the circuit court erred by finding that no conditions could reasonably ensure defendant's appearance at later hearings. Defendant stated that he repeatedly urged the court to hold a hearing pursuant to article 110 of the Code; however, the court ultimately granted the State's petition to detain without giving the defense an opportunity to be heard. Defendant requested that the order for detention be vacated or, alternatively, a new detention hearing be granted.

¶ 11 On December 8, 2023, defendant filed a memorandum in support of his appeal, and on December 26, 2023, the State responded.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues that the circuit court erred in granting the State's petition to detain because the Code does not contemplate the State's filing of such petitions against incarcerated defendants who were ordered released but subsequently held on the condition of depositing financial surety. Rather, he contends, the court should have held a hearing under section 110-5 of the Code concerning his conditions of release. 725 ILCS 5/110-5 (West 2022). Defendant further claims that the court's order for detention should be vacated where (1) the State failed to present clear and convincing evidence of willful flight, (2) the court failed to sufficiently consider less restrictive conditions, and (3) defendant was denied a fair hearing. The State contends that these issues were forfeited. We vacate and remand for a new detention hearing.

¶ 14 As for the standard of review, we employ a bifurcated standard, in which the court's factual findings are reviewed under a manifest-weight-of-the-evidence standard and the court's ultimate findings are reviewed for an abuse of discretion. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 17. An abuse of discretion occurs only when the circuit court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the circuit court. *People v. Williams*, 2022 IL App (2d) 200455, ¶ 52. Additionally, to the extent our consideration involves the Code's construction, our review is *de novo*. *People v. Kurzeja*, 2023 IL App (3d) 230434, ¶ 10.

¶ 15 A. Forfeiture

¶ 16 As a threshold matter, we note that defendant moved to strike the State's petition to detain in the circuit court but on a different basis from that presented here. To evade forfeiture, defendant frames his first issue as ineffective assistance of counsel or second-prong plain error. Additionally, the State responds that all defendant's claims are forfeited because the notice of appeal was insufficient, as it did not indicate the grounds for relief. Of course, " '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.' " *Id.* ¶ 9 (quoting *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 65).

¶ 17 We do not think it unreasonable that defendant did not raise his arguments below, given that the State and defendant filed their petitions when the procedures and provisions at issue were recently enacted (indeed, the Act became effective mere days earlier), the cases now relied on by the parties were not yet decided, and defendant quickly initiated this appeal. Thus, we do not think applying forfeiture here serves the interest of creating or maintaining a sound body of precedent. We are inclined to relax forfeiture in this case, as it raises important issues in the developing body of law under this new statutory regime. See *id.* However, regardless of forfeiture, defendant's statutory-authority claim fails because, as the following will show, there is no error. See *People v. Bannister*, 232 Ill. 2d 52, 65 (2008) (noting that the first step in a plain-error analysis is to determine whether error occurred at all, because if there was no error, there can be no plain error); *People v. Easley*, 192 Ill. 2d 307, 329 (2000) ("[I]t is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong."); see also *People v. Ivory*, 217 Ill. App. 3d 619, 625 (1991) (finding no ineffective assistance of counsel because there was no error).

¶ 18 Moreover, the State's claim that defendant simply checked boxes in the notice of appeal and did not support his claims for relief with facts or argument is disingenuous. Defense counsel provided an addendum to the notice of appeal that provided facts, arguments, and citations of case law that supported defendant's grounds for relief. Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023) does not prohibit counsel from filing the form notice of appeal with a supporting addendum cohesively discussing the grounds for relief, and it would be counterproductive to limit counsel to only the lines provided on the form notice of appeal, when it is far more important that the substance of Rule 604(h) is followed. However, in the future, we note that it would be a better practice for defense counsel to organize his addendum with subheadings that refer to the corresponding boxes in the notice of appeal.

¶ 19 B. The State's Statutory Authority to Petition to Detain

¶ 20 Defendant argues that the State did not have the authority, under the Code, to petition to detain him and, thus, the court's order detaining him should be vacated. Defendant asserts that his situation is addressed in section 110-7.5 of the Code. See 725 ILCS 5/110-7.5 (West 2022). This section divides defendants into three categories, the second of which is a defendant who remained in pretrial detention after the effective date of the Act and was previously ordered released with pretrial conditions, including "depositing security." *Id.* § 110-7.5(b). Such a defendant may choose either to remain in detention subject to the condition of monetary security or to file a motion invoking his or her right to a hearing under section 110-5(e) to have pretrial conditions reviewed anew. *Id.* §§ 110-7.5(b), 100-5(e); see also *People v. Davidson*, 2023 IL App (2d) 230344, ¶ 17; *People v. Rios*, 2023 IL App (5th) 230724, ¶ 16. This hearing should address new conditions of bond without consideration of financial surety. *Id.* § 110-7.5(b). Defendant asserts that sections 110-7.5 and 110-5 do not authorize the State to petition for his pretrial detention.

¶ 21 Defendant cites *Rios*, 2023 IL App (5th) 230724, as authority. There, the defendant similarly remained in detention after the effective date of the Act subject to the condition of

monetary surety. The State initiated review of the defendant's conditions of release by filing a verified petition to detain. The court determined that the Act did not authorize the State's petition initiating review of the defendant's pretrial conditions and detention, as the statute indicated that a *defendant* could either seek a hearing under section 110-5(e) or remain subject to the original bail order. *Id.* ¶¶ 12, 16-18. The State's petition did not satisfy the timing requirements or exceptions under the article 110 as amended by the Act. *Id.* ¶ 12. Accordingly, the untimeliness of the State's petition resulted in it lacking the authority to petition to detain the already-detained defendant. *Id.* ¶¶ 10-12, 16-18. However, the *Rios* court recognized that, if a defendant seeks a hearing to have his or her pretrial conditions reviewed anew, he or she "might be detained without any possibility of pretrial release." *Id.* ¶ 17. In other words, electing a hearing could prompt the State to respond and seek the defendant's detention, without the opportunity to post bond.

¶ 22 Here, defendant moved to remove the financial surety as a condition of his pretrial release and requested the consideration of alternative conditions for release, if necessary. 725 ILCS 5/110-5(e), 110-7.5(b) (West 2022). Accordingly, that motion triggered consideration of defendant's pretrial release conditions under the Code, as amended by the Act, under which, on the State's petition, the court could deny defendant's release altogether. See *Kurzeja*, 2023 IL App (3d) 230434, ¶¶ 8-15 (holding that the State's petition to detain, filed after the defendant's motion to remove a financial condition, was a responsive pleading); *Davidson*, 2023 IL App (2d) 230344, ¶ 18 (same); *cf. Rios*, 2023 IL App (5th) 230724, ¶ 12 (holding that the State's detention petition was untimely in the *absence* of a petition for pretrial release). Accordingly, the State's petition here is a *responsive* pleading to defendant's petition for release. See 725 ILCS 5/110-6.1 (West 2022). Thus, contrary to defendant's argument, the State's petition was appropriate.

¶ 23 C. Defendant's Pretrial Detention Hearing

¶ 24 Defendant next argues that the circuit court erred in denying him pretrial release. He contends that the State provided an inadequate proffer to establish, by clear and convincing evidence, that he had a high likelihood of willful flight and contends that he was denied a fair hearing because he was not provided an opportunity to be heard. Moreover, he asserts the State failed to present evidence, and the court failed to make findings, regarding the imposition of alternatives to pretrial detention that could have mitigated defendant's risk of flight. We agree. Accordingly, we vacate the court's detention order and remand this cause for a new hearing on defendant's motion to remove financial conditions.

¶ 25 The Act amended the Code by abolishing traditional monetary bail in favor of pretrial release on personal recognizance or with conditions of release. *Id.* §§ 110-1.5, 110-2(a). Section 110-6.1(e) of the Code presumes that all persons charged with an offense are eligible for pretrial release. *Id.* §§ 110-2(a), 110-6.1(e). However, a defendant's pretrial release may be denied in certain statutorily limited situations (qualifying offenses). *Id.* §§ 110-2(a), 110-6.1.

¶ 26 Here, the State sought to prove defendant should not be released under section 110-6.1(a)(8)(B) (willful flight) of the Code (*id.* § 110-6.1(a)(8)(B)), as the State conceded it could not move forward under the dangerousness standard. Under that section, the circuit court may deny a defendant pretrial release if "the person has a high likelihood of willful flight to avoid prosecution and is charged with *** [a] felony offense other than a Class 4 offense." *Id.* In addition to having to prove the likelihood of "willful flight" and that the felony offense is not

a Class 4 offense, the State carries the burden of proving 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 for offenses listed in paragraph (8) of subsection (a)." *Id.* § 110-6.1(e)(3)(ii). " 'Willful flight' means intentional conduct with a purpose to thwart the judicial process to avoid prosecution." *Id.* § 110-1(f). Subsection (f) provides, "[i]solated instances of nonappearance in court alone are not evidence of the risk of willful flight," but "[r]eoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution." *Id.*

¶ 27 Our analysis here is simple, as the State did not present any evidence (and the circuit court did not make any findings) regarding whether any condition or combination of conditions would mitigate defendant's risk of willful flight. At the hearing, the State provided "context," not a proffer,[4] which failed to address its burden of proof, the class of the qualifying offense, any repeated instances to evade prosecution, or evidence showing that no condition or combination of conditions could mitigate defendant's risk of flight from prosecution. Instead, the State merely indicated that there was a pending petition to revoke in case No. 22-CF-157 because, while defendant was on probation in that case, he was charged in case No. 23-CF-266. It also stated that defendant was a flight risk because, in May 2023, while he was still on probation, he was charged in case No. 23-CF-938 after he fled a traffic stop. The record also shows that the petition to revoke was not included in the State's petition to detain, and any failures to appear included in the public safety assessment were not admitted. There was also no discussion of conditions of release other than detention or argument indicating why conditions of release would be inappropriate.

¶ 28 Based on the State's "context," the court found that it could *sua sponte* detain defendant because he was on probation and was arrested for an offense greater than a Class A misdemeanor. The court repeatedly reiterated that it detained defendant on this basis (presumably pursuant to section 110-6(a) (*id.* § 110-6(a)), although this was not a modification hearing). Secondarily, the court added that it was granting the State's petition to detain based on risk of flight because defendant had also previously failed to appear. The court failed to address any evidence, presumably because nothing was proffered, regarding conditions of release or why any conditions would not mitigate defendant's risk of flight. This was unreasonable. We simply cannot infer on this barren record that there are no conceivable conditions of release that would mitigate defendant's risk of flight. See *People v. Stock*, 2023 IL App (1st) 231753, ¶¶ 18-19 (holding that the trial court erred in ordering pretrial detention where the State relied essentially on the defendant's commission of a violent offense and failed to cite facts supporting its conclusion that no condition or combination of conditions could mitigate the threat posed by the defendant). Moreover, the circuit court's oral findings were not buttressed by its written order for detention. In fact, the order was notably absent *any* written findings indicating *why* less restrictive conditions would not prevent defendant's willful flight from prosecution. 725 ILCS 5/110-6.1(h)(1) (West 2022). The court's checkbox

[4]A proffer by the State must be based on reliable information, and prior to the hearing, the State must tender to the defense "copies of the defendant's criminal history ***, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the prosecutor's possession at the time of the hearing." 725 ILCS 5/110-6.1(f)(1), (2) (West 2022).

boilerplate order, thus, does not comply with section 110-6.1(h)(1) and, when considered with the oral findings, only supports our conclusion that the court abused its discretion.

¶ 29 On remand, the record should reflect that defendant filed the originating motion to reconsider conditions of release. See *id.* § 110-5(e), 110-7.5(b). The State's petition to detain is a responsive pleading seeking detention. See *id.* § 110-6.1; *Davidson*, 2023 IL App (2d) 230344, ¶ 18. If the State wishes to file a second or subsequent petition in this case, addressing new claims for detention, it must present "a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition." 725 ILCS 5/110-6.1(d)(2) (West 2022). Thereafter, the court shall hold a hearing on defendant's motion and the State's responsive pleading. *Id.* §§ 110-6.1(a), 7.5(b). At this hearing, *both* parties can present evidence or a proffer (based on reliable information) supporting their pleadings. *Id.* § 110-6.1(f)(2). However, on the State's responsive pleading, it must overcome the presumption by clear and convincing evidence that defendant is eligible for pretrial release (*id.* § 110-6.1(e)), meaning the State must address the imposition of conditions of release, if necessary, or detention, and *why* no less restrictive conditions or combination or conditions could mitigate the threat to the community or any person based on specific articulable facts of the case or defendant's willful flight from prosecution. If the State seeks detention, as it did here, it must tender to defendant copies of his "criminal history ***, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the prosecutor's possession" *prior* to the hearing. *Id.* § 110-6.1(f)(1).

¶ 30 In making its determination, the circuit court should consider the many overlapping factors discussed in sections 110-5(a) and 110-6.1(g), including (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant[5]; (4) the nature and seriousness of the specific, real, and present threat to any person that would be posed by the defendant's release; (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process; (6) the age and physical condition of the complaining witness; (7) whether defendant is known to possess or have access to any weapons; (8) whether, at the time of the offense at issue or arrest, defendant "was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law"; and (9) any other factors that have a reasonable bearing upon defendant's propensity or reputation for violent, abusive, or assaultive behavior or lack of such behavior. *Id.* §§ 110-5(a), 110-6.1(g). No singular factor is dispositive. *Id.* § 110-6.1(f)(7).

¶ 31 If the court concludes that detention is appropriate, it must make written findings summarizing the court's reasons for detention, including *why* less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community,

[5]The defendant's history and characteristics include "the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, *** criminal history, *** record concerning appearance at court proceedings" as well as "whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state." 725 ILCS 5/110-5(a)(3)(A), (B) (West 2022).

based on the specific articulable facts of the case, or prevent the defendant's willful flight from prosecution. *Id.* § 110-6.1(h)(1).

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Lake County is vacated and the cause remanded for further proceedings in compliance with the foregoing procedures.

¶ 34 Order vacated; cause remanded.