

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).

2023 IL App (4th) 230820-U

NO. 4-23-0820

IN THE APPELLATE COURT

OF ILLINOIS

FILED

December 5, 2023

Carla Bender

4th District Appellate Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Rock Island County
DALE LEE SHORTER,)	No. 23CF535
Defendant-Appellant.)	
)	Honorable
)	Frank R. Fuhr,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding that (1) defendant forfeited his claim that the State’s verified petition to deny him pretrial release was improperly filed and (2) the trial court did not abuse its discretion in denying him pretrial release.

¶ 2 Defendant, Dale Lee Shorter, appeals the trial court’s order granting the State’s motion to deny him pretrial release. The order was entered on September 18, 2023, the date the pretrial release provisions of Public Acts 101-652 and 102-1104 (see Pub. Acts 101-652, § 10-255, 102-1104, § 70 (eff. Jan. 1, 2023)), commonly known as the Pretrial Fairness Act (Act), went into effect. See *Rowe v. Raoul*, 2023 IL 129248, ¶ 52. These provisions are codified in article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110 (West 2022)).

¶ 3 On appeal, defendant argues the trial court erred by hearing and granting the State's verified petition to deny him pretrial release because the Act does not allow the State to file such petitions for defendants who, like him, remain in custody after having been ordered released on the condition of depositing security. Alternatively, defendant argues the State failed to show by clear and convincing evidence that his release posed a real and present threat to the safety of the community and that no conditions of release could mitigate this threat. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On July 6, 2023, defendant was charged with residential burglary (720 ILCS 5/19-3(a) (West 2022)), two counts of burglary (*id.* § 19-1(a)), and two counts of possession of a stolen or converted vehicle (625 ILCS 5/4-103(a)(1) (West 2022)). The trial court set defendant's bond at \$100,000 but reduced it to \$75,000 approximately one month later. Defendant was unable to pay the bond and remained in pretrial custody.

¶ 6 On September 8, 2023, defendant filed a motion for pretrial release pursuant to the Act. On September 13, 2023, the State filed a verified petition to deny defendant pretrial release, which asserted that defendant was charged with a qualifying offense and his release posed a threat to the safety of any person or persons or the community.

¶ 7 On September 18, 2023, the first day the Act was in effect (see *Rowe*, 2023 IL 129248, ¶ 52), the trial court held a hearing on the State's verified petition to deny defendant pretrial release. The State indicated during its proffer that the victim reported to the police that her garage and vehicle had been burglarized and a second vehicle had been stolen. Officers reviewed video footage of the incident, which was captured on a doorbell camera. The video recording showed five individuals drive up to the victim's house in a vehicle the officers learned had been reported stolen. The video footage showed the individuals stealing several items from a

vehicle parked in the victim's driveway and several items from the victim's garage. The footage also showed one of the individuals drive away in a vehicle that had been parked inside the victim's garage. Officers identified defendant as one of the individuals involved in the incident. The State indicated that defendant had a pending petition to revoke his probation in a 2021 case for aggravated unlawful use of a weapon. The State asserted defendant also had previous felony convictions and a current bench warrant on a felony in Scott County, Iowa.

¶ 8 The trial court entered an order for detention. The court found that the proof was evident or the presumption great that defendant had committed a qualifying offense, defendant posed a real and present threat to the safety of the community, and no condition or combination of conditions of pretrial release could mitigate this threat. The court found less restrictive conditions would not assure the safety of the community based on defendant's age, the nature of the charge, and the nature of his prior criminal record. The court indicated defendant's record reflected no respect for the law or the orders of the court. The court noted that defendant had been convicted of multiple offenses since becoming an adult in 2021, including aggravated unlawful use of a weapon. The court stated: "Any conditions I put on him would require him to have some modicum of respect for the law. His prior record indicates he has none."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred by hearing and granting the State's verified petition to deny him pretrial release because the Act does not allow the State to file such petitions for defendants who remain in custody after having been ordered released on the condition of depositing security. Alternatively, defendant argues the State failed to show by

doctrine, the first step is determining whether a clear or obvious error occurred. *Id.* “Plain-error review is reserved for errors that are clear or obvious based on law that ‘is well settled at the time of trial ***.’ ” *People v. Williams*, 2015 IL App (2d) 130585, ¶ 11 (quoting *People v. Downs*, 2014 IL App (2d) 121156, ¶ 20). “The plain error doctrine is not a backdrop to catch merely arguable issues that could have been raised in the trial court. The error had to be manifest or patent.” *People v. Hammons*, 2018 IL App (4th) 160385, ¶ 17.

¶ 17 This court recently considered a similar issue in *People v. Martin*, 2023 IL App (4th) 230826. In *Martin*, as in the instant case, the defendant argued in his memorandum, but not in the trial court or in his notice of appeal, that the State lacked authority under the Act to file its petition to deny him pretrial release under similar circumstances. *Id.* ¶ 16. As in the instant case, the defendant in *Martin* argued that the issue was reviewable under the plain error doctrine or on the basis that defense counsel was ineffective for failing to raise it. *Id.* The *Martin* court rejected the defendant’s plain error argument, finding that, even if the State’s petition to deny the defendant pretrial release was improper, that fact was neither clear nor obvious on the day of the detention hearing, which, as in the instant case, was held on the first day the Act went into effect. *Id.* ¶ 17.

¶ 18 As in *Martin*, we find the issue is not reviewable under the plain error doctrine. At the time of the detention hearing in this case, it was neither clear nor obvious under the law that the State could not file a verified petition to deny defendant pretrial release in response to defendant’s motion for pretrial release filed on September 8, 2023. Although not directly bearing on our decision here, we note that, since the time of the detention hearing in this case, several appellate decisions have indicated the State may indeed file such responsive petitions to deny pretrial release. See *People v. Jones*, 2023 IL App (4th) 230837, ¶ 38 (Turner, J., specially

concurring); *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 22; *People v. Rios*, 2023 IL App (5th) 230724, ¶ 17. We conclude that any error relating to the State’s authority to file the verified petition in this case was not clear or obvious at the time of the detention hearing, and, accordingly, this issue is not reviewable under the plain error doctrine.

¶ 19 *2. Ineffective Assistance of Counsel*

¶ 20 We also find defendant has not established that his counsel was ineffective for failing to move to strike the petition. “To prevail on an ineffective-assistance-of-counsel claim, a defendant must demonstrate that counsel’s performance fell below an objective standard of reasonableness and that counsel’s deficient performance resulted in prejudice.” *People v. Johnson*, 2021 IL 126291, ¶ 52. In order to show prejudice, “a defendant must demonstrate that there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *Id.*

¶ 21 Here, defendant has not shown that a reasonable probability exists that the result of the proceeding would have been different if counsel had moved to strike the State’s verified petition. As we have discussed, it is not at all clear that the State’s verified petition was improper where it was filed in response to defendant’s motion for pretrial release. See *Jones*, 2023 IL App (4th) 230837, ¶ 38 (Turner, J., specially concurring); *Vingara*, 2023 IL App (5th) 230698, ¶ 22; *Rios*, 2023 IL App (5th) 230724, ¶ 17. Thus, we find defendant is unable to establish that his counsel’s performance was unreasonable or that he suffered prejudice as a result.

¶ 22 As we have found that this issue is not reviewable under the plain error doctrine or as a claim of ineffective assistance of counsel, we do not reach the merits of this forfeited issue.

¶ 23 **B. Denial of Pretrial Release**

¶ 24 Alternatively, defendant argues that the trial court erred by entering the detention order because the State’s verified petition for denial of pretrial release and its proffer at the hearing failed to show by clear and convincing evidence that defendant’s release posed a real and present threat to the safety of the community or that no conditions of release could mitigate such a threat. We review the trial court’s decision to deny defendant pretrial release for an abuse of discretion. *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11.

¶ 25 Section 110-6.1(a)(1.5) of the Code provides that, upon verified petition by the State, the trial court shall hold a hearing and may deny pretrial release to a defendant charged with residential burglary only if “the defendant’s pretrial release 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.” 725 ILCS 5/110-6.1(a)(1.5) (West 2022). In determining whether defendant poses such a threat, the court may consider, but is not limited to, several enumerated factors, including (1) the nature and circumstances of the charged offense, (2) the history and characteristics of the defendant, (3) the identity of any person whose safety the defendant is believed to pose a threat, (4) any statements made by the defendant, (5) the age and physical condition of the defendant, (6) the age and physical condition of any victim or complaining witness, (7) whether the defendant is known to possess or have access to weapons, (8) whether at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, or other release from custody, and (9) any other factors having a reasonable bearing on the defendant’s propensity or reputation for violent, abusive, or assaultive behavior, or the lack of such behavior. *Id.* § 110-6.1(g).

¶ 26 A presumption exists that a defendant is eligible for pretrial release, and the State has the burden to overcome this presumption by proving by clear and convincing evidence that:

(1) “the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a),” (2) defendant posed “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,” and (3) no condition or combination of conditions set forth in section 110-10(b) of the Code (*id.* § 110-10(b)) could mitigate this threat. *Id.* § 110-6.1(e).

¶ 27 Here, the trial court did not abuse its discretion in determining the State had proven by clear and convincing evidence that defendant posed a threat to the safety of the community and that no condition or combination of conditions could mitigate this threat. The court found that defendant posed a threat to the safety of the community, noting the nature of the charged offense, defendant’s age, and defendant’s criminal record. The court found that no conditions placed on defendant could guarantee the safety of the community because defendant’s prior record showed he had no respect for the law or orders of the court. The court’s finding was supported by the State’s proffer, which indicated that defendant and four others entered a garage attached to a residence during the charged offenses and stole several items, including a vehicle. Also, the State’s proffer and a pretrial report appearing in the record indicated that defendant was on probation for aggravated unlawful use of a weapon at the time of the charged offenses and had been convicted of multiple offenses since he turned 18 in 2021, including aggravated unlawful use of a weapon, theft, and burglary. Based on the record in this case, we conclude the trial court’s finding that the State met its burden was not arbitrary, fanciful, or unreasonable. See *Inman*, 2023 IL App (4th) 230864, ¶ 10.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court’s judgment.

¶ 30 Affirmed.