2023 IL App (5th) 230715-U

NO. 5-23-0715

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Coles County.
	)	
v.	)	No. 23-CM-89
	)	
MELANIE R. HOUTS,	)	Honorable
	)	Brian L. Bower,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Boie and Justice Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: We vacate the circuit court's detention order where the State filed an untimely petition to detain.

¶ 2 Defendant, Melanie R. Houts, appeals the September 19, 2023, order of the circuit court of Coles County that granted the State's petition to deny pretrial release and ordered her detained. Defendant was arrested and detained prior to the effective date of Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act (Act),[1] 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

[1]"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.

provisions of the Code); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). On appeal, defendant argues that the court erred by granting the State's verified petition to detain where the Act does not allow the State to file a verified petition to deny pretrial release for defendants who remain in custody after having been ordered released on the condition of depositing security. Defendant also argues that counsel was ineffective for failing to move to strike the State's verified petition. Alternatively, defendant argues that the State failed to prove, by clear and convincing evidence, that defendant's release posed a real and present threat to the safety of any person or the community, that no conditions of release could mitigate this threat, or that her mental health condition indicated violent, abusive, or assaultive nature. Because defendant was arrested and detained prior to the date the Act went into effect, this appeal presents a narrow issue relevant to only those defendants who were arrested and detained prior to the effective date of the Act. For the following reasons, we vacate the court's detention order.

¶ 3 I. BACKGROUND

¶ 4 On May 4, 2023, defendant was charged by information with violation of an order of protection, a Class A misdemeanor (720 ILCS 5/12-3.4(a), (d) (West 2022)).[2] On the same date, the circuit court set defendant's bond at $2500, requiring the deposit of 10%. The court also appointed counsel to represent defendant. At subsequent hearings, the court denied appointed counsel's requests to reduce defendant's bond or release defendant on personal recognizance on three occasions. The court ordered defendant to undergo a fitness examination, and she was eventually found unfit to stand trial. Defendant remained in pretrial detention and did not receive treatment, despite the finding of unfitness.

[2]Defendant was arrested the previous day, May 3, 2023.

¶ 5 On September 18, 2023, the Act became effective. As of September 18, 2023, defendant remained in pretrial detention. Also, on September 18, 2023, the State filed a petition to deny defendant pretrial release pursuant to section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)). The State's petition was supported by three affidavits. The first affidavit, prepared by law enforcement officer Travis Schumacher, indicated that defendant was placed under arrest on May 3, 2023, for violating an order of protection when she entered a residence that was listed as a protected address on the no contact order. The second affidavit, prepared by law enforcement officer Brett Hall, indicated that defendant was arrested on April 19, 2022, the day after defendant fled from police in her car when she was spotted with a wanted individual. The third affidavit, prepared by law enforcement officer Logan Brown, indicated that he observed defendant hitting herself in the face with the steel door of her cell while incarcerated on June 4, 2023. Brown further attested that when officers went into her cell to restrain her, she was naked and threw a pair of underwear with a menstrual pad at the officers.

¶ 6 On September 19, 2023, the circuit court held a hearing on the petition. The State argued that detention was appropriate under section 110-6.1(a)(3) of the Code (*id.* § 110-6.1(a)(3)). In support, the State, relying on the facts outlined in the affidavits attached to its petition, asserted that defendant committed a qualifying offense and her pretrial release "would pose a real and present threat to the safety of persons, including herself or the community, because of the charged offense and the Defendant's criminal history and pending history." The State noted that defendant had a "relatively minor" criminal history, comprised primarily of misdemeanors, but that she was previously charged with concealing or aiding a fugitive (22-CF-236). The State further noted that defendant was "awaiting [Illinois Department of Human Services (IDHS)] transport for a finding of unfitness" due to "a mental break" which indicated that she needed treatment and posed a risk

of harm to herself and others. The State asserted that it defied reason "not to state that [defendant] need[ed] to be detained until she receive[d] treatment for her safety and to prevent future offenses as well." According to the State, incarceration subject to regaining fitness was the least restrictive means to ensure the safety of defendant and persons in the community.

¶ 7 In response, appointed counsel argued that there was no evidence that defendant committed any violent offenses or made threats of violence in violating the order of protection. Appointed counsel then stated:

> "In regards to this, we understand she is awaiting IDHS fitness and has been so ever since she was declared unfit three months ago, on May 30th of 2023. At this point, we haven't gotten any kind of response back as to when she would be taken to McFarland, other than a letter approximately a month ago that it would be in three weeks."

Appointed counsel asserted that there were less restrictive means other than incarceration. Appointed counsel acknowledged that defendant "would have to still go to Department of Human Services at some point and she would make herself available to do so."

¶ 8 After considering the arguments made by the parties, the circuit court stated:

> "In my opinion, this is somewhat of a unique situation where someone has been found to be unfit and is awaiting transfer for the purpose of hopefully regaining fitness. I can't explain to anyone why there's such a backlog or a delay in folks receiving those services, but that's the situation we find ourselves in in this state and maybe in others.
>
> So, in considering the purpose of the SAFE-T Act, I find that, first of all, the proof is evident or the presumption great that the Defendant has committed a qualifying offense—the State's evidence is strong in that regard—and that qualifying offense is violation of an order of protection.
>
> In this case, in my opinion, based upon the specific articulable facts of the case and also considering the fact that the Defendant has been found unfit, I find the Defendant poses a real and present threat to the safety of any person or persons or the community."

The court found that there was a threat to the safety of the person who petitioned for the order of protection, despite the lack of evidence of use of violence by defendant. The court was more concerned for the safety of defendant. The court found that no condition or combination of

conditions could mitigate the real and present threat to the safety of the community and defendant herself. The court went on to state:

> "I think it would be irresponsible on the part of the Court to release her and simply rely upon her to show up for treatment through IDHS when that's available to her, because at this point in time I don't know when that might be and I think simply releasing her would subject the community to potential additional harm and certainly [defendant] herself to additional harm."

Accordingly, the court granted the State's petition to deny pretrial release and entered an order for detention. In the order, the court noted that it found, by clear and convincing evidence, that defendant met the dangerousness standard (*id*. § 110-6.1(a)(1)-(7)). Defendant filed a timely notice of appeal.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant first argues that the circuit court erred when it granted the State's petition to detain because the Act does not allow the State to file a verified petition to deny pretrial release for defendants who remain in custody after having been ordered released on the condition of depositing security. Specifically, defendant argues that the State was not permitted to file a petition to detain due to the timing requirements of section 110-6.1(c)(1) of the Code (*id*. § 110-6.1(c)(1)). We agree.

¶ 11 This court recently considered this issue in *People v. Rios*, 2023 IL App (5th) 230724. This court, in applying a *de novo* standard of review, noted that section 110-6.1 sets forth the prerequisites for denial of pretrial release. *Id.* ¶¶ 8-10. This court considered subsection (c)(1), which mandates the timing of a petition to detain, and states as follows:

> "(1) A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant;

provided that while such petition is pending before the court, the defendant if previously released shall not be detained." 725 ILCS 5/110-6.1(c)(1) (West 2022).

In interpreting subsection (c)(1), this court noted as follows:

> "The plain language of this section sets forth the deadline for the State to file a petition to detain. The State may file a petition to detain at the time of the defendant's first appearance before a judge; no prior notice to the defendant is required. Alternatively, the State may file a petition to detain the defendant within 21 calendar days after the arrest and release of the defendant; however, reasonable notice is to be provided to the defendant under this circumstance. The exception to these timing requirements is set forth in section 110-6." *Rios*, 2023 IL App (5th) 230724, ¶ 10.

¶ 12 This court next discussed section 110-6, which addresses the revocation of pretrial release, the modification of conditions of pretrial release, and sanctions for violations of conditions of pretrial release. *Id.* ¶ 11. Section 110-6 provides, in pertinent part, as follows:

> "(a) When a defendant has previously been granted pretrial release under this Section for a Class A misdemeanor, that pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release after a hearing on the court's own motion or upon the filing of a verified petition by the State.
>
> * * *
>
> (b) If a defendant previously has been granted pretrial release under this Section for a Class B or Class C misdemeanor offense, a petty or business offense, or an ordinance violation and if the defendant is subsequently charged with a felony that is alleged to have occurred during the defendant's pretrial release or a Class A misdemeanor offense that is

alleged to have occurred during the defendant's pretrial release, such pretrial release may not be revoked, but the court may impose sanctions under subsection (c).

* * *

(i) Nothing in this Section shall be construed to limit the State's ability to file a verified petition seeking denial of pretrial release under subsection (a) of Section 110-6.1 or subdivision (d)(2) of Section 110-6.1." 725 ILCS 5/110-6 (West 2022).

In interpreting section 110-6, this court found that it did not apply to defendants who had not been released following arrest and had not committed any new offenses. *Rios*, 2023 IL App (5th) 230724, ¶ 12.[3] This court further found that the exception to the timing requirements set forth in section 110-6.1(c)(1) did not apply to such defendants. *Id*. Thus, this court found that "the State's petition to detain pursuant to section 110-6.1 was untimely, and the circuit court did not have the authority to detain [the defendant] pursuant to the untimely petition." *Id.*

¶ 13 Similarly, in the present case, the State's petition to detain pursuant to section 110-6.1 was untimely because the State did not file the petition to detain at defendant's first appearance or within 21 days after defendant's arrest. Moreover, as in *Rios*, section 110-6 did not apply to defendant because she had not been released following arrest and she had not committed any new offenses. Accordingly, as in *Rios*, the exception to the timing requirements set forth in section 110-6.1(c)(1) did not apply to defendant, and the State's petition to detain pursuant to section 110-6.1 was untimely. Consequently, we reach the same conclusion reached in *Rios*—that the circuit court lacked the authority to detain defendant pursuant to the untimely petition.

[3]In *Rios*, this court noted that the appeal addressed "a narrow issue only relevant to those defendants who were arrested and detained prior to the Act taking effect." *Rios*, 2023 IL App (5th) 230724, ¶ 1. Thus, this court noted that our "holding should not be construed to affect those defendants arrested on or after the effective date of the Act." *Id. Rios* applies in this case because defendant was arrested and detained prior to the Act taking effect.

¶ 14 This court went on to note in *Rios* that, "[a]lthough section 110-6 of the Code was not applicable to [the defendant], the Code does take into consideration those persons who were arrested prior to the effective date of the Act and separates them into three categories." *Id.* ¶ 13 (citing 725 ILCS 5/110-7.5 (West 2022)). Here, as in *Rios*, defendant belongs to the second category, which consists of any person who remains in pretrial detention after being ordered released with pretrial conditions. *Id.* § 110-7.5(b).

¶ 15 Section 110-7.5(b) provides:

> "(b) On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5.
>
> On or after January 1, 2023, any person, not subject to subsection (b), who remains in pretrial detention and is eligible for detention under Section 110-6.1 shall be entitled to a hearing according to the following schedule:
>
> (1) For persons charged with offenses under paragraphs (1) through (7) of subsection (a) of Section 110-6.1, the hearing shall be held within 90 days of the person's motion for reconsideration of pretrial release conditions.
>
> (2) For persons charged with offenses under paragraph (8) of subsection (a) of Section 110-6.1, the hearing shall be held within 60 days of the person's motion for reconsideration of pretrial release conditions.
>
> (3) For persons charged with all other offenses not listed in subsection (a) of Section 110-6.1, the hearing shall be held within 7 days of the person's motion for reconsideration of pretrial release conditions." *Id.*

¶ 16 Section 110-5(e) provides:

> "If a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant." *Id.* § 110-5(e).

¶ 17 In construing these provisions, this court found that defendants "who previously had pretrial conditions set, including the depositing of monetary security, have two options under the Code." *Rios*, 2023 IL App (5th) 230724, ¶ 16. This court noted that "[u]nder sections 110-7.5(b) and 110-5(e), a defendant may file a motion seeking a hearing to have their pretrial conditions reviewed anew." *Id.* "Alternatively, a defendant may elect to stay in detention until such time as the previously set monetary security may be paid. A defendant may elect this option so that they may be released under the terms of the original bail." *Id.*

¶ 18 This court went on to state:

> "We come to this conclusion because although the plain language of section 110-1.5 of the Code abolished the *requirement* of the posting of monetary bail, it did not eliminate the *option* to post the previously ordered security. *Id.* § 110-1.5 ('Abolition of monetary bail. On and after January 1, 2023, the requirement of posting monetary bail is

abolished, except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact which are compacts that have been entered into between this State and its sister states.'). Some defendants may prefer this second option, which allows for the possibility of pretrial release if the previously set monetary security is posted, as opposed to requesting a hearing, pursuant to the first option, after which they might be detained without any possibility of pretrial release. We believe this is particularly true in cases where the previously set monetary security is in an amount that the defendant believes the defendant will be able to post soon. This is analogous to when a change in the sentencing law occurs after a defendant has committed the offense—the defendant is given the opportunity to choose to be sentenced under that law that existed at the time of the offense or the newly enacted law. *People v. Horrell*, 235 Ill. 2d 235, 242 (2009)." (Emphases in original.) *Rios*, 2023 IL App (5th) 230724, ¶ 17.

¶ 19 We note that, unlike *Rios*, defendant in the present case was found unfit and ordered to complete treatment before the State filed the petition to detain. It appears from the record that defendant had not yet been transferred to IDHS for treatment at the time the State filed the petition to detain. The circuit court considered this fact in granting the State's petition to detain. We note that the court's prior orders setting bail at $2500 and requiring defendant to complete treatment to restore fitness remain in effect. We merely hold that the court lacked authority to grant the State's petition to detain and order defendant detained pursuant to section 110-6.1 of the Code. Accordingly, we vacate the court's detention order. In light of our decision, we need not address defendant's remaining arguments.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we vacate the circuit court's detention order.

¶ 22 Order vacated.