

NOTICE
Decision filed 05/14/24. 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) 230303-U

NO. 5-24-0303

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,)	Vermilion County.
)	
v.)	No. 22-CF-86
)	
FRANCIS BRISCOE,)	Honorable
)	Robert E. McIntire,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant filed a motion to reconsider the conditions of his pretrial release, the State was permitted to file a responsive petition to deny pretrial release and the circuit court did not err in conducting a hearing on those matters. The State met its burden to show by clear and convincing evidence that defendant posed a real and present threat to the safety of the victim and the community, and that no conditions or combination of conditions would avoid that threat.
- ¶ 2 Defendant, Francis Briscoe, appeals the circuit court’s order of February 13, 2024, denying him pretrial release pursuant to Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity Today Act (Act).¹ See Pub. Act 101-652, § 10-255 (eff. Jan. 1, 2023); see also Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various

¹The Act has been referred to as the “SAFE-T Act” and the “Pretrial Fairness Act.” Neither name is official, as neither appears in the Illinois Compiled Statutes or the public act. See *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1.

provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). We affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 24, 2022, the State charged defendant by information with attempted first degree murder, a Class X felony (720 ILCS 5/9-1(a)(1) (West 2022)); aggravated battery with a firearm, a Class X felony (*id.* § 12-3.05(e)(1)); aggravated domestic battery, a Class 2 felony (*id.* § 12-3.3(a)); and unlawful possession of a weapon by a felon, a Class 2 felony (*id.* § 24-1.1(a)).

¶ 5 On February 28, 2022, the circuit court set defendant’s cash bond at \$1 million (10%) and, in the event defendant posted bond, imposed additional conditions on defendant, including a no contact order with the victim, Breanna English, and GPS monitoring. Defendant did not post bond and remained in pretrial detention.

¶ 6 On December 18, 2023, defendant filed a *pro se* motion requesting a hearing on conditions of release. On January 3, 2024, defense counsel filed a similar motion arguing that defendant was entitled to a conditions of release hearing and that defendant no longer posed a threat of safety to anyone. On January 25, 2024, defendant filed a *pro se* motion requesting reconsideration of conditions of pretrial release. Defendant argued that any petition to detain from the State would be untimely. On February 9, 2024, the State filed a verified petition to deny defendant pretrial release based upon dangerousness.

¶ 7 On February 9, 2024, the circuit court held a hearing on defense counsel’s motion and the State’s petition. Defense counsel made an oral motion to strike the State’s petition to deny pretrial release as untimely. The court denied defense counsel’s oral motion, granted defendant’s request to remove monetary bond, and heard the State’s petition to deny pretrial release.

¶ 8 The State noted that defendant had prior felony convictions in Indiana for possession of a handgun with altered serial numbers and theft of a firearm. The State then proffered that on February 24, 2022, defendant confronted his ex-girlfriend, English, at a Walmart in Danville, Illinois. Defendant and the victim dated for six years but broke up shortly before the confrontation. Following the breakup, defendant sent English threatening messages and pictures of guns. Defendant located English shopping with her family. Following an argument, defendant exited the store. After leaving the store, English noticed defendant's vehicle parked next to her car. Defendant waited for English and then insisted on helping her load her groceries into her car. An argument ensued and defendant grabbed English, pulled her away from the car, pulled out a gun, and shot her one time. English fell to the ground, defendant approached her, and shot her again. The State argued that based upon defendant's threats to English, and the violent and premeditated nature of the offense, defendant posed a danger to English and that no condition or combination of conditions of pretrial release could mitigate the threat and ensure her safety.

¶ 9 Defense counsel argued that the alleged incident at issue was a "highly-charged emotional circumstance." Defense counsel requested a home detention order and GPS monitoring, given the alleged incident took place two years prior and defendant had not contacted English since.

¶ 10 Following argument by the parties, the circuit court found that defendant committed a detainable offense. The court also found that defendant posed a danger to English and that no condition or conditions could mitigate that threat of danger. In so ruling, the court reasoned that defendant, a convicted felon, shot English in a fit of anger in a public place, endangering not only English but the public. The court also noted that defendant, who was prohibited from possessing a firearm, attempted to "discharge the coup de grâce," a final blow, by shooting English as she lay on the ground. Based on these findings, the court ordered defendant detained.

¶ 11 On February 13, 2024, the circuit court issued a written order of detention. Defendant filed a timely notice of appeal. Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023).

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant initially claims the circuit court erred in denying him pretrial release, arguing the State’s verified petition to deny pretrial release was untimely, where the Act does not allow the State to file such a petition unless the petition is filed within the timing requirements set forth in section 110-6.1(c) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1(c) (West 2022)). In response, the State argues that section 110-6(g) of the Code (*id.* § 110-6(g)) permits filing a responsive petition to deny pretrial release.

¶ 14 Defendant’s claim presents an issue of statutory construction. “The primary goal of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intention of the legislature” *Jackson v. Board of Election Commissioners of Chicago*, 2012 IL 111928, ¶ 48. The best indication of the legislative intent is the plain language of the statute. *Id.* “The statute should be evaluated as a whole, with each provision construed in connection with every other section. When the statutory language is clear, we must apply the statute as written without resort to other tools of construction.” *Id.* Matters of statutory construction are reviewed *de novo*. *People v. Taylor*, 2023 IL 128316, ¶ 45.

¶ 15 Pretrial release is governed by article 110 of the Code (725 ILCS 5/art. 110 (West 2022)), as amended by the Act. Under the Code, a defendant’s pretrial release may only be denied in certain statutorily limited situations. See *id.* §§ 110-2(a), 110-6.1. Upon filing a timely, verified petition requesting denial of pretrial release, the State has the burden to prove by clear and convincing evidence that the proof is evident or the presumption great that the defendant committed a qualifying offense, that the defendant’s pretrial release poses a real and present threat

to the safety of any person or the community or a flight risk, and that less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. *Id.* § 110-6.1(e), (f).

¶ 16 Section 110-6.1(c) of the Code addresses the timing of the State's petition, which provides that the State may file a petition, without prior notice to the defendant, at the first appearance before a judge, or within 21 calendar days after the arrest and release, with reasonable notice to the defendant. *Id.* § 110-6.1(c). In *People v. Rios*, this court determined that the plain language in section 110-6.1(c)(1) set forth a deadline for the State to file a petition to detain. 2023 IL App (5th) 230724, ¶ 10. Specifically, this court determined that:

“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.” *Id.*

This court found that the exceptions to the above timing requirements set forth in section 110-6 were not applicable in the defendant's case since the defendant had not been released following his arrest and no new offenses had been alleged. *Id.* ¶ 12. As such, the State's petition to detain under 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.*

¶ 17 This court further found that the defendant fell within section 110-7.5(b) of the Code (725 ILCS 5/110-7.5(b) (West 2022)), because he was a person who remained in pretrial detention, on or after January 1, 2023, after having been ordered released with pretrial conditions. *Rios*, 2023 IL App (5th) 230724, ¶ 14. Section 110-7.5(b) states that such a defendant “shall be entitled to a

hearing under subsection (e) of Section 110-5.” 725 ILCS 5/110-7.5(b) (West 2022). Upon reviewing and analyzing sections 110-6.1(c)(1), 110-6, and 110-5(e) (*id.* §§ 110-6.1(c)(1), 110-6, 110-5(e)), this court determined that defendants, such as the defendant in *Rios*, have the following two options:

“Under 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. 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.” *Rios*, 2023 IL App (5th) 230724, ¶ 16.

This court reasoned that while the plain language of section 110-1.5 of the Code (725 ILCS 5/110-1.5 (West 2022)) abolished the requirement of posting a monetary bail, it did not eliminate the option to post the previously ordered security, and some defendants may prefer the second option, as opposed to requesting a hearing. *Rios*, 2023 IL App (5th) 230724, ¶ 17.

¶ 18 In this case, as in *Rios*, the circuit court set a cash bond following defendant’s arrest prior to the effective date of the Act of September 18, 2023. Defendant remained in custody because he was unable to post the cash bond. Unlike *Rios*, here, defendant initiated this proceeding by filing motions to reconsider the conditions of pretrial release on December 18, 2023, January 3, 2024, and January 25, 2024, pursuant to sections 110-7.5(b) and 110-5(e) of the Code (725 ILCS 5/110-7.5(b), 110-5(e) (West 2022)). Specifically, defendant asked the court to remove the deposit of monetary security as a condition of his pretrial release and release him on the least restrictive pretrial conditions. The State then filed a responsive petition to deny pretrial release.

¶ 19 Section 110-6(g) addresses the modification of conditions of pretrial release. It provides: “The court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in this subsection. The court may only add or increase conditions of pretrial release at a hearing under the Section.” *Id.* § 110-6(g). Section

110-6 also provides: “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.” *Id.* § 110-6(i).

¶ 20 Here, based on the plain language of the Code, defendant had two options: (a) remain in detention until the previously set monetary security was paid, or (b) file a motion to modify the previously set conditions of pretrial release under sections 110-7.5(b) and 110-5(e) of the Code (725 ILCS 5/110-7.5(b), 110-5(e) (West 2022)). See *Rios*, 2023 IL App (5th) 230724, ¶¶ 16-17. The circuit court clarified at the hearing on defense counsel’s motion and the State’s verified petition to deny pretrial release that defendant had the option of maintaining monetary conditions or moving forward without them and making arguments pertaining to the State’s verified petition to deny pretrial release. Counsel conferred with defendant and then informed the court that “[defendant] has indicated he wants to proceed with moving on to the new system without cash bond.” Defendant elected to file a motion to modify the terms of his pretrial release and therein argued for the least restrictive conditions of pretrial release. Since defendant moved to have his pretrial conditions reviewed anew, the State was permitted to file a responsive petition and make opposing arguments. *People v. Gray*, 2023 IL App (3d) 230435, ¶¶ 14-15. For the reasons stated, we reject defendant’s contention that the circuit court erred when it considered the State’s petition to deny pretrial release.

¶ 21 Defendant next argues that the State failed to prove by clear and convincing evidence that defendant posed a real and present threat to the safety of the victim and the community and that no condition or conditions could mitigate that threat. Defendant argues that the circuit court “relied almost exclusively on the nature of the offense itself” when it denied pretrial release based upon dangerousness. Defendant reiterates that two years have passed since the incident giving rise to

the charges at issue in the present case and that no further allegations of wrongdoing occurred in those two years. Defendant argues that the Act speaks of “mitigation” of threats using conditions rather than elimination of threats, and that conditions could properly mitigate any threat posed to the victim.

¶ 22 The circuit court may order a defendant detained if the defendant is charged with a qualifying offense, and the circuit court concludes that defendant poses a real and present threat to the safety of any person or the community (725 ILCS 5/110-6.1(a)(1)-(7) (West 2022)). The Code provides a nonexclusive list of factors that the circuit court may consider in making a “determination of dangerousness,” *i.e.*, that the defendant poses a real and present threat to any person or the community. *Id.* § 110-6.1(g). The circuit court may consider evidence or testimony as to factors that include, but are not limited to, (1) the nature and circumstances of any offense charged, including whether the offense is a crime of violence involving a weapon or a sex offense; (2) the history and characteristics of the defendant; (3) the identity of any person to whom the defendant is believed to pose a threat and the nature of the threat; (4) any statements made by or attributed to the defendant, together with the circumstances surrounding the statements; (5) the age and physical condition of the defendant; (6) the age and physical condition of the victim or complaining witness; (7) whether the defendant is known to possess or have access to a weapon; (8) whether at the time of the current offense or any other offense, the defendant was on probation, parole, or supervised release from custody; and (9) any other factors including those listed in section 110-5 of the Code (*id.* § 110-5). *Id.* § 110-6.1(g).

¶ 23 If the circuit court finds that the State proved a valid threat to the safety of any person or the community, the court must determine 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.” *Id.* § 110-5(a). In reaching its determination, the circuit court must consider (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;² (4) the nature and seriousness of the specific, real, and present threat to any person that would be posed by the defendant’s release; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. *Id.* The statute lists no singular factor as dispositive. See *id.*

¶ 24 If the circuit court determines that the defendant should be denied pretrial release, the court is required to make written findings summarizing the reasons for denying pretrial release. *Id.* § 110-6.1(h). The circuit court’s ultimate determination regarding pretrial release will not be reversed absent an abuse of discretion. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13; *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9. Likewise, questions regarding whether the circuit court properly considered one or more of the statutory factors in determining dangerousness and/or conditions of release are reviewed for an abuse of discretion. *Simmons*, 2019 IL App (1st) 191253, ¶ 15 (in considering circuit court’s decision to deny bail, the reviewing court will not substitute its judgment for that of the circuit court merely because it would have balanced the appropriate factors differently). An abuse of discretion occurs when the decision of the circuit court is arbitrary, fanciful, or unreasonable, or when no reasonable person would agree with the position adopted by the circuit court. *Id.* ¶ 9.

²The 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, and 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).

¶ 25 Additionally, the circuit court’s finding that the State presented clear and convincing evidence showing that mandatory conditions of release would fail to protect any person or the community, and/or that the defendant had a high likelihood of willful flight to avoid prosecution, or that the defendant failed to comply with previously issued conditions of pretrial release thereby requiring a modification or revocation of the previously issued conditions of pretrial release will not be reversed unless those findings are against the manifest weight of the evidence. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001) (applying a similar standard of review for the requirement of clear and convincing evidence by the State in termination of parent rights proceedings). “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 26 In this case, the circuit court determined that defendant posed a real and present threat to the safety of the victim and the community, and that no condition or combination of conditions could alleviate the threat. The court reasoned that defendant—who was prohibited from possessing firearms—shot the victim in a public area, and then shot her again after she had fallen to the ground. The court also noted that defendant had no allegations of wrongdoing in the past two years because he was in jail. Based on our review of the record, we find that the circuit court’s finding that defendant met the dangerousness standard, posing a real and present threat to the safety of the victim or the community, was not against the manifest weight of the evidence, and, that the circuit court’s finding that no less restrictive conditions would avoid the real and present threat to the safety of the victim or the community was not against the manifest weight of the evidence.

¶ 27

III. CONCLUSION

¶ 28 Accordingly, we affirm the circuit court’s order denying defendant pretrial release.

¶ 29 Affirmed.