

NOTICE
Decision filed 12/26/23. 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.

2023 IL App (5th) 230786-U

NO. 5-23-0786

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-926
)	
AYMANE BZAMI,)	Honorable
)	Roger B. Webber,
Defendant-Appellant.)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justice Boie concurred in the judgment.
Presiding Justice Vaughan dissented.

ORDER

¶ 1 *Held:* Where the circuit court had authority to hold a hearing and rule on the defendant’s response to the State’s source of bail funds motion pursuant to 725 ILCS 5/110-5(b-5) (West 2020), we reverse and remand for further proceedings.

¶ 2 The defendant, Aymane Bzami, appeals the September 25, 2023, order of the circuit court of Champaign County. The 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 Accordingly, his appeal addresses a narrow issue only

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.

relevant to those defendants who were arrested and detained prior to the Act taking effect.² Therefore, our holding should not be construed to affect those defendants arrested on or after the effective date of the Act. For the reasons that follow, we reverse and remand.

¶ 3 BACKGROUND

¶ 4 On July 23, 2023, the defendant was charged with the offenses of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2022)), aggravated fleeing or attempting to elude a police officer (625 ILCS 5/11-204.1(a)(1) (West 2022)), and possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2022)). The defendant’s bond was set in the amount of \$275,000, requiring a deposit of 10%. An additional charge was filed for unlawful possession with intent to deliver cannabis (720 ILCS 550/5(g) (West 2022)), a Class X felony. Because of this new charge, the State then filed a motion for a source of bail funds hearing pursuant to section 110-5(b-5) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-5(b-5) (West 2020)), which alleged that “reasonable cause exist[ed] to believe that any money the defendant may post constitutes the fruits of criminal or unlawful conduct.” This motion was granted on July 25, 2023, and the defendant remained in pretrial detention.

¶ 5 On September 8, 2023, defense counsel filed a motion to prove the source of bail funds to be posted, which was set for hearing on September 25, 2023. On September 22, 2023, the State filed a petition seeking to deny the defendant’s pretrial release pursuant to section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)).

¶ 6 On September 25, 2023, the circuit made a finding that it no longer had authority to conduct a source of bail funds hearing. The circuit court agreed that the defendant was “entitled to a hearing

²While the effective date pursuant to the statute was January 1, 2023, our supreme court lifted the stay and set the effective date as September 18, 2023. See Pub. Acts 101-652, § 10-255, 102-1104, § 70 (eff. Jan. 1, 2023); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52.

under 110(e),” and noted that the defendant “was clearly unable to post the bond that satisfies the source of the bond order[,] [s]o he is entitled to that hearing,” and that “the ball [is] in the defendant’s court whether he wants a hearing under 110(e), or he wants to not request that hearing and remain in custody.”

¶ 7 The defendant elected “to hold his position” and argued that because the circuit court granted the State’s motion for a source of bail funds hearing prior to the effective date of the Act, he was still entitled to a hearing on that motion. The circuit court found the Code failed to address the issue of a motion for source of bail funds inquiry and further found that the issue was moot now that the Act was in effect. The defendant timely appealed. Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023).

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant argues that the circuit court had the authority to hold a hearing and rule on the defendant’s response to the State’s source of bail funds motion. We agree.

¶ 10 The issue on appeal involves a question of statutory interpretation that is reviewed *de novo*. *People v. Taylor*, 2023 IL 128316, ¶ 45. When interpreting a statute, the primary goal, “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*, 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.*

¶ 11 The Code takes into consideration those persons who were arrested prior to the effective date of the Act and separates them into three categories. 725 ILCS 5/110-7.5 (West 2022). The

first category consists of any person who was released subject to pretrial conditions prior to the effective date of the Act. *Id.* § 110-7.5(a). The second category consists of any person who remains in pretrial detention after being ordered released with pretrial conditions, *including the depositing of monetary security.* *Id.* § 110-7.5(b). The third category consists of any person who remains in pretrial detention and whose bond was previously set as “no bail.” *Id.*

¶ 12 The defendant belongs to the second category. *Id.* 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.” *Id.*

¶ 13 Section 110-5(e) states as follows:

“(e) 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).

¶ 14 This court addressed the defendant’s right to elect to have a 110-5(e) hearing, stating that

“defendants such as Rios who previously had pretrial conditions set, including the depositing of monetary security, have two options under the Code. 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.” *People v. Rios*, 2023 IL App (5th) 230724, ¶ 16.

Here, the defendant elected to stay in detention until he could pay the previously set monetary security. However, the circuit court’s order for hearing on the State’s motion for a source of bail bond inquiry was still in effect. With respect to that order, the circuit court stated that “it’s this court’s finding that there is no longer authority for the court to conduct a source of bail hearing.”

¶ 15 We do not read the Code to prevent the defendant from proceeding with a hearing in response to the State’s motion for a source of bond inquiry if the defendant elects to forego a hearing pursuant to section 110-5(e). We believe this ruling is consistent with the court’s analysis in *Rios*.

¶ 16 Although the Code does not address a State’s motion for source of bond inquiry hearing pursuant to section 110-5(b-5) of the Code (725 ILCS 5/110-5(b-5) (West 2020)), we find that the circuit court’s order mandating a source of bail hearing, which was entered before the effective date of the Act, was not extinguished. If the defendant elects the benefit of the option to be released under the terms of the original bail, he cannot escape the burden of having to prove at a hearing that the source of that bail did not constitute the fruits of criminal or unlawful conduct.

¶ 17

CONCLUSION

¶ 18 For the reasons stated, we reverse the circuit court’s order of September 25, 2023, and remand the cause further proceedings.

¶ 19 Reversed and remanded.

¶ 20 PRESIDING JUSTICE VAUGHAN, dissenting:

¶ 21 The majority’s decision ignores the State’s argument that this appeal should be dismissed for lack of jurisdiction. While I also sympathize with defendant’s situation, sympathy is no substitute for jurisdictional authority. Even if the State had not argued that this court lacked jurisdiction, this court “has an independent duty to consider issues of jurisdiction.” *People v. Smith*, 228 Ill. 2d 95, 104 (2008).

¶ 22 Defendant appealed the trial court’s September 25, 2023, order under Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023), which governs appeals of orders under Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act.³ Under Rule 604(h), defendant can only appeal orders under the Act if the order: (1) impose conditions of pretrial release, (2) revoke pretrial release, or (3) deny pretrial release. Ill. S. Ct. R. 604(h)(1)(i)-(iii) (eff. Sept. 18, 2023).

¶ 23 The trial court’s September 25, 2023, order did not encompass any order appealable under Rule 604(h) and never addressed the State’s verified petition to deny pretrial release. The court’s September 25, 2023, order denied defendant’s motion for a bail source hearing after finding the court “no longer ha[d] authority to conduct a source of bail hearing” under the Code. The court explicitly allowed defendant to stand on the pretrial release order filed on July 22, 2023, and

³The title of Rule 604(h) states, “Appeals From Orders Under the Pretrial Fairness Act ***.” However, “Pretrial Fairness Act” is not the official name, as it does not appear in the Illinois Compiled Statutes or Public Act 101-652 (eff. Jan. 1, 2023).

reaffirmed on July 24, 2023. The condition that defendant must show the legitimate and lawful source of funds for said bail was imposed by an order filed July 25, 2023, in which the court noted that the order was filed before the effective date of the Act. Therefore, the court's September 25, 2023, order did not impose any new conditions, revoke pretrial release, or deny pretrial release, under the Code.

¶ 24 Use of the Pretrial Fairness Act notice of appeal form does not create jurisdiction where none exists. On November 30, 2023, this court issued a decision in *People v. Cline*, 2023 IL App (5th) 230849. After considering the language in Illinois Supreme Court Rule 604(h)(1), *Cline* held that the court lacked jurisdiction to consider an appeal from a trial court's order granting a motion to strike the State's petition for detention because an order on a motion to strike was not one of the orders listed in Rule 604(h). *Id.* ¶¶ 18-20. As noted in *Cline*, Rule 604(h)(1) limits appeals “ ‘from an interlocutory order of court entered under sections 110-5, 110-6, and 110-6.1 of the Pretrial Fairness Act’ ” to orders imposing conditions of pretrial release, revoking pretrial release, denying a petition to revoke pretrial release, denying pretrial release, or denying a petition to deny pretrial release. *Id.* ¶ 18 (quoting Ill. S. Ct. R. 604(h)(1) (eff. Sept. 18, 2023)).

¶ 25 While the petition at issue in *Cline* was based on section 110-6.1 (725 ILCS 5/110-6.1 (West 2022)), here, defendant's appeal is not based on any section of the Code, and the sole argument on appeal is that the court's denial of his motion for a bail source hearing was in error. Our jurisdiction to consider interlocutory appeals by defendant under the Act is limited to those found in Rules 604(h)(1)(i), (ii), and (iii) (Ill. S. Ct. R. 604(h)(1)(i), (ii), (iii) (eff. Sept. 18, 2023)). Nothing in those rules provides this court with jurisdiction to address the denied motion raised on appeal. Nor does defendant point to any rule or statute that would cloak this court with the necessary jurisdiction allowing us to consider the issue.

¶ 26 Because defendant appealed, pursuant to Rule 604(h), from an order that is not appealable under Rule 604(h), this court lacks jurisdiction. Accordingly, I dissent.