

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) 230857-U

NO. 4-23-0857

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 27, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Rock Island County
CAREY L. CROWDER,)	No. 21CF1055
Defendant-Appellee.)	
)	Honorable
)	Frank R. Fuhr,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* The State failed to prove the circuit court erred in granting defendant pretrial release under the Pretrial Fairness Act.

¶ 2 The State appeals the circuit court’s order granting defendant, Carey L. Crowder, pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today Act (Act). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (setting the Act’s effective date as September 18, 2023).. The State argues the court abused its discretion in finding (1) conditions of release would reasonably ensure defendant would appear for later hearings, (2) the State failed to prove no condition or combination of conditions can mitigate the real and present threat to the safety of a person or the

community or defendant's willful flight, and (3) the State failed to prove defendant posed a real and present threat to the safety of others. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On December 14, 2021, defendant was charged with "FAIL TO RPT WKLY/NO ADDR/2ND+," as "defendant, a sexual predator, knowingly failed to report a change of address or report as homeless, in accordance with the provisions of the Child Sex Offender Registration Act *** within seven days of his prior registration on November 3, 2021." See 730 ILCS 150/6 (West 2020). According to the charge, defendant had an August 2020 conviction for failure to report a change of address within three days in Rock Island County case No. 20-CF-220 and the offense is a Class 2 felony. That same day, an arrest warrant was issued.

¶ 5

Defendant initially appeared on this charge on April 30, 2022. He was remanded into custody. Bond was set at \$10,000, with 10% to apply. On that same date, defendant was to be interviewed by a Rock Island County probation officer. Defendant refused to be interviewed. The officer reported defendant, born in 1970, had convictions for failing to register as a sex offender, burglary, and sexual conduct with a minor. The legal history is listed, as it appears in the report, as follows:

"UNKNOWN 10-30-93 Scott NCIC

Burglary 3rd Probation IA

UNKNOWN 01-05-00 Maricopa NCIC

Sexual Conduct w/ Minor DOC AZ

15 CF 40 06-11-15 Henry NCIC

Fail to Report Empl Change Cond Discharge IL

18 CF 703 11-05-20 RI

Fail to Report Addr/2+ Probation IL”

According to the report, defendant had once been unsuccessfully discharged from probation.

¶ 6 On June 14, 2022, defendant posted bond. He appeared in court three days later.

A pretrial conference was scheduled for July 28, 2022.

¶ 7 On July 28, 2022, defendant failed to appear at that conference. The pretrial conference was continued to the following day. Defendant again failed to appear. An arrest warrant was issued, and bond was set at \$10,000, with 10% to apply.

¶ 8 On September 6, 2023, defendant appeared on the failure to appear warrant and was remanded into custody. Two days later, defendant filed a motion for pretrial release.

¶ 9 The State countered, on September 14, 2023, with a verified petition to deny defendant pretrial release. In its petition, the State checked boxes to allege “defendant has a high likelihood of willful flight to avoid prosecution and is charged with: *** a felony offense other than a Class 4 offense.” For the factual basis, the State wrote the following: “On 11/03/21, [defendant] went to RIPD to register as homeless. The Registration Act requires weekly registration (if homeless) with the agency having jurisdiction. Crowder failed to report on 11/10/21, and has not reported in any jurisdiction at any time thereafter.”

¶ 10 A hearing was held on September 19, 2023. At that hearing, the State argued defendant’s charged offense, a Class 2 felony, was a detainable offense even though it was not a forcible felony. The circuit court asked, “Based on the risk of flight?” The State responded affirmatively. The State and the court discussed the charges and potential mandatory minimum three-year sentence defendant faced. The State asserted defendant failed to report in Henry County case No. 20-CF-220 and Rock Island County case Nos. 18-CF-705 and 15-CF-40. The Henry County case involved another charge of failing to report weekly, as well as a charge for

criminal trespass to land. For that offense, defendant was given conditional discharge.

¶ 11 After the State concluded its argument, the circuit court turned to defense counsel. Defense counsel first asked, “So[,] it’s just based on risk of flight?” The court responded affirmatively. Defense counsel argued the State failed to meet its burden of showing by clear and convincing evidence intentional conduct to thwart the judicial process to avoid prosecution.

¶ 12 The circuit court entered its findings:

“So by clear and convincing evidence, he’s charged with a detainable offense under both the willful[-]flight theory because it’s a felony and the danger theory because it’s a mandatory prison sentence.

I find that proof is evident, presumption great that he did commit the offense. I don’t find evidence that would support a finding under this statutory scheme that he is a willful[-]flight risk, which I think is a difficult standard to meet, but hopefully we’ll get some guidance from the Appellate Court that will explain exactly what they mean. And I also don’t see based on his record and conduct we have that at this time he’s a danger to the community or any specific person.”

¶ 13 After the circuit court made its findings, it asked the State what conditions it wanted for defendant’s release. The State requested global positioning system monitoring, which the court ordered. In addition to the statutory conditions of release (see 725 ILCS 5/110-10(a) (West 2022)), the court ordered defendant to remain in Rock Island County, report to court services, appear for all court dates, and report and register as a sex offender.

¶ 14 The record shows, after defendant was released on September 19, 2023, he appeared in court on September 21. On defendant’s motion, the matter was continued until the next day. Defendant did not appear.

¶ 15 On September 25, 2023, the State filed its notice of appeal pursuant to the Pretrial Fairness Act under Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023).

¶ 16 II. ANALYSIS

¶ 17 Initially, we address the State’s contentions based on allegations defendant posed a “real and present threat to the safety of any person or persons or the community” (see 725 ILCS 5/110-6.1(a)(1) (West 2022)) and find those contentions forfeited. To preserve an issue for appellate review, that matter must have been brought to the attention of the circuit court. *People v. Jackson*, 2022 IL 127256, ¶ 15, 211 N.E.3d 414; see *People v. Sophanavong*, 2020 IL 124337, ¶ 21, 181 N.E.3d 154 (“[T]he doctrine of forfeiture applies to the State as well as to defendant.”). The State not only did not bring the issue of defendant’s dangerousness to the circuit court’s attention but also consistently maintained “willful flight” as the only basis for its claim. In its verified petition to deny defendant pretrial release, the State alleged pretrial release should be denied based on defendant’s “likelihood of willful flight to avoid prosecution” (725 ILCS 5/110-6.1(a)(8) (West 2022)). At the hearing on the pretrial-detention pleadings, the State argued only “willful flight.” When defense counsel asked at the hearing whether willful flight was the only issue, the circuit court stated it was. Because the issue was not argued or defended in the circuit court, we will not review it.

¶ 18 Under the Code, a presumption exists “a defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense[] and complies with all terms of pretrial

release.” 725 ILCS 5/110-2(a) (West 2022). The Code places the burden on the State “to prove by clear and convincing evidence that any condition of release is necessary.” *Id.* § 110-2(b). We review the decision of whether pretrial release should be granted or denied under an abuse-of-discretion standard. See *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11. We will find an abuse of discretion when we find the determination regarding pretrial release is unreasonable, arbitrary, or fanciful, or when we find no reasonable person would agree with the court’s decision. *Id.* ¶ 10. This court will not substitute the circuit court’s judgment with our own judgment simply because we would have weighed the proper factors differently. *Id.* ¶ 11.

¶ 19 Here, the State sought to prove defendant should not be released under section 110-6.1(a)(8)(B) of the Code (725 ILCS 5/110-6.1(a)(8)(B) (West 2022)). 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 “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 “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]eocurrence 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.*

¶ 20 The State makes no challenge to the appropriateness of the circuit court’s

determination there is insufficient proof of “willful flight.” This failure is grounded in the State’s conclusion the court found defendant had been charged with a detainable offense. In support, the State relies on the court’s language: “So by clear and convincing evidence, he’s charged with a detainable offense under *** the willful[-]flight theory because it’s a felony.” While this language, standing alone, appears to support the State’s conclusion, two sentences later, the court expressly found no risk of willful flight: “I don’t find evidence that would support a finding under this statutory scheme that he is a willful[-]flight risk.” Given this express finding, the court’s initial statement, the one relied upon by the State, is simply an acknowledgement defendant had been charged with a felony other than a Class 4 felony, which is only one part of the test to determine whether there is a detainable offense under section 110-6.1(a)(8)(B). The determination the evidence was insufficient to show defendant was a willful-flight risk renders section 110-6.1(a)(8)(B) inapplicable, meaning defendant could not be detained under section 110-6.1.

¶ 21 The circuit court’s unchallenged finding regarding willful flight is fatal to the State’s claims on appeal. Absent a finding of risk of willful flight, section 110-6.1(a)(8), the only section on which the State relied in its verified petition to deny defendant pretrial detention, the court had no basis on which to grant the State’s petition and deny defendant’s release.

¶ 22 Moreover, because there was no willful flight and, therefore, no basis on which to detain defendant, we need not address the State’s remaining nonforfeited arguments. Even if the State could prove error on those grounds, the State would not be entitled to the relief it seeks, which, as stated in the notice of appeal, is defendant’s detention.

¶ 23 III. CONCLUSION

¶ 24 We affirm the circuit court’s judgment.

¶ 25

Affirmed.