

2024 IL App (1st) 240759-U

No. 1-24-0759B

Order filed July 12, 2024

FIFTH DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
Plaintiff-Appellee,) Cook County.
)
v.) No. 13 CR 7738
)
ANTHONY JACKSON,) Honorable
) Kenneth J. Wadas,
Defendant-Appellant.) Judge, presiding.

PRESIDING JUSTICE MITCHELL delivered the judgment of the court.
Justice Mikva and Justice Lyle concurred in the judgment.

ORDER

- ¶ 1 *Held:* We vacate the circuit court's order granting the State's petition for detention and remand for further proceedings.
- ¶ 2 Defendant Anthony Jackson appeals the circuit court's order detaining him pending retrial. Ill. S. Ct. R. 604(h) (eff. Dec. 7, 2023). Defendant argues that the Pretrial Fairness Act (Public Act 101-652 (eff. Sept. 18, 2023)) does not authorize the State to file a petition for detention, that the State's petition was untimely, and that the State failed to carry its burden of proving by clear and convincing evidence that defendant is a threat to any person and that no conditions could mitigate

that threat or defendant's risk of flight. For the following reasons, we vacate the detention order and remand for further proceedings.

¶ 3 In 2015, a jury convicted Jackson of first-degree murder in the killing of Sanchez Mixon on an "L" train platform in Chicago. 720 ILCS 5/9-1 (West 2012). The circuit court granted Jackson's motion for a new trial based on trial counsel's failure to present available mitigating evidence. In 2021, after a second trial, a jury again convicted Jackson of first-degree murder. On direct appeal, this court reversed and remanded for a new trial on the grounds that Jackson's counsel failed to request a second-degree murder jury instruction, did not allow Jackson to testify, and argued self-defense to the jury without supporting evidence. *People v. Jackson*, 2023 IL App (1st) 220424. On remand, Jackson first appeared in the circuit court on February 27, 2024, and the State filed a verified petition for detention on March 7, 2024.

¶ 4 The circuit court held a hearing on March 19, 2024, where Jackson elected to proceed *pro se*. Jackson repeatedly objected to holding a detention hearing and argued that he was "under the old law" referring to the bail statute in effect before the Pretrial Fairness Act became effective. (R. 22, 23, 33, 34-37, 40, 42.) The circuit court overruled Jackson's objections and proceeded to hold a hearing on the State's petition. The State proffered that in 2013, Jackson engaged in conversation with victim Sanchez Mixon on the 43rd Street Green Line CTA platform, after which Jackson began punching Mixon in the head, knocking him to the ground. Jackson then stomped the victim's head repeatedly. Other passengers called the police, and Jackson fled the scene. Jackson turned himself in to police two days later and was positively identified by two witnesses on the platform. The circuit court found that Jackson posed a real and present threat to the safety of any person or person or the community and that no conditions or combination of conditions could mitigate that

threat. The circuit court granted the State's petition and ordered Jackson detained pending retrial. Jackson timely appealed. Ill. S. Ct. R. 604(h) (eff. Dec. 7, 2023).

¶ 5 Jackson argues that the Pretrial Fairness Act does not authorize the State to file a petition to detain in the situation presented here: that is, where a defendant's conviction has been reversed on appeal and his case remanded for a new trial.

¶ 6 Section 110-11 of the Code of Criminal Procedure, as amended by the Pretrial Fairness Act, states that "[i]f the judgment of conviction is reversed and the cause remanded for a new trial the trial court may order that the conditions of pretrial release stand pending such trial, or modify the conditions of pretrial release." 725 ILCS 5/110-11 (West 2022). This provision is almost identical to a provision in the prior bail statute. 725 ILCS 5/110-11 (West 2020) ("If the judgment of conviction is reversed and the cause remanded for a new trial the trial court may order that the bail stand pending such trial or reduce or increase bail."). There is a dearth of case law interpreting either provision.

¶ 7 Significantly, Jackson did not challenge his continued detention after his conviction was reversed and remanded. Rather, he filed a motion for substitution of judge, and once his objection to proceeding to a detention hearing was overruled, he filed a written objection styled as an "Emergency Liberty Motion." During the detention hearing, Jackson explained that after the circuit court granted his motion for a new trial in 2016, the circuit court ordered him held "no bail." The current record on appeal does not include that order, but the record from his merits appeal includes a transcript of that proceeding where the circuit court ordered defendant held "no bail" because of the brutality of the crime: "He's going to stay in custody without bond because I saw

the video and I read the record of his trial and the evidence is still substantial against him.” Jackson appealed that bail ruling multiple times and the appellate court denied relief.

¶ 8 Does the Code permit the State to petition to detain Jackson? No—at least, not yet. The State’s petition is premature. The General Assembly expressly provided that detainees with bail determinations under the prior law could remain on the terms of that original bond. 725 ILCS 5/110-7.5(a) (West 2022). If a defendant elects to revisit his pretrial status under the new law, *id.* § 110-5(e), only then does the State have authority to seek detention. *People v. High*, 2024 IL App (1st) 240586-U, ¶ 29. Our case law has been nearly uniform on this point. See *People v. Davidson*, 2023 IL App (2d) 230344, ¶ 18, *People v. Kurzeja*, 2023 IL App (3d) 230434, ¶ 15, *People v. Jones*, 2023 IL App (4th) 230837, ¶ 17, *People v. Carter*, 2024 IL App (5th) 230977-U, ¶ 15.

¶ 9 What does all this mean for our defendant? Since his conviction was reversed, the mittimus reflects that Jackson is held in custody as “an addendum to the previous order setting bail and committing the defendant to the Cook County Department of Corrections.” As best we can discern from the lengthy record in Jackson’s merits appeal, the “previous order setting bail” was the November 9, 2016 order holding Jackson “no bail.”¹ This is consistent with Jackson’s representations at the detention hearing, but should nonetheless be confirmed on remand. Since his conviction has been reversed and his case remanded for new trial, Jackson has not sought a hearing under the Pretrial Fairness Act. Quite the contrary, he has indicated his preference to proceed under “the old law.”

¹ We can take judicial notice of records in related cases. *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010).

¶ 10 In our view, Jackson is in the same position as a pretrial detainee who is being detained pursuant to an order entered prior to the effective date of the Pretrial Fairness Act. Nothing in the language of the Act suggests that Jackson should be treated any differently. As a consequence, absent Jackson moving for pretrial release under the Pretrial Fairness Act, the State’s petition to detain is premature. *Cf. High*, 2024 IL App (1st) 240586-U, ¶ 30 (holding that because the defendant moved for reconsideration, instead of electing to stand on his prior bond, the State was then “allowed to file a *responsive* detention petition.” (Emphasis in original.)).

¶ 11 Jackson has indicated in this appeal that, on remand, he intends to seek to modify the no bond order set prior to his second trial. If he does that, his only avenue for seeking such relief would be under the Pretrial Fairness Act and his invocation of his rights under that Act would lead to the State’s opportunity to petition for detention. But none of that has occurred at this point.

¶ 12 Jackson has elected—at least for now—to proceed under the terms of the prior bail order: “no bail.” Accordingly, we vacate the order granting the State’s detention petition. In light of this conclusion, we need not reach Jackson’s other claims of error. The circuit court’s March 19, 2024 order granting the State’s petition to detain is vacated, and the cause is remanded for further proceedings consistent with this Order.

¶ 13 Vacated and remanded.