

2023 IL App (2d) 230424-U
No. 2-23-0424
Order filed January 23, 2024

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 22-CF-593
)	
GERALD J. COOK)	Honorable
)	Philip J. Montgomery,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE McLAREN delivered the judgment of the court.
Justices Birkett and Mullen concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant-Appellant failed to file a memorandum, and both of his notices of appeal were inadequate to address the issues for a decision on the merits. Further, there is no transcript of the hearing that denied release contrary to *Foutch v. O’Bryant*, 99 Ill. 2d 389 (1989). We determine that defendant has forfeited all claims of error and affirm.
- ¶ 2 Defendant, Gerald J. Cook, timely appeals, under Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023), the order of the circuit court of De Kalb County denying pretrial release pursuant

to Public Acts 101-562 and 102-1104 (eff. Jan. 1, 2023, stayed until Sept. 18, 2023, by court order), commonly known as the Pretrial Fairness Act (Act).¹ For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with three counts: (1) unlawful possession of methamphetamine with intent to deliver, a class X felony, (2) possession of a methamphetamine, a class 1 felony, and (3) possession of a controlled substance, a class 4 felony.

¶ 5 The court denied pretrial release on October 18, 2023. Defendant filed a notice of appeal on October 24, 2023. The form of the Notice was the standard form for appeals under Illinois Supreme Court Rule 606 (eff. Oct. 19, 2023) and did not contain any boxes to check setting forth the claims of error as under Rule 604(h). There was a handwritten comment at the bottom of the page: “See Appendage [*sic*] ‘A.’ ” However, there was nothing attached to the notice, let alone an appendage.

¶ 6 The State filed a motion to dismiss on the basis that the notice of appeal contained no allegations of error ascribed to the judgment as are contained in the proper form for Rule 604(h) appeals. The defendant’s reply was, “Since the State’s motion to dismiss lacks any legal basis, it should be denied.” We took the motion with the case. Thereafter the defendant filed an amended notice of appeal with the proper form for Rule 604(h) appeals. However, the amended notice of appeal was filed 29 days after the supporting record was filed. This amended notice of appeal

¹The Act has also been referred to as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act. Neither name is official, as neither appears in the Illinois Compiled Statutes or public acts.

failed to include citations to the record previously filed and contained no citations to authority in support of the elaborations in the amended notice of appeal.

¶ 7 With the proper notice, the defendant checked every box on the form except the two boxes designated as “Other (explain).” The first five boxes checked had no added elaboration. The sixth box regarding denial of a fair hearing had the following elaboration, “Hearing over Zoom.” The next added elaboration was a list of the factors that the trial court failed to consider: “725 ILCS 5/110-5(a),(1),(2),(3)(A),(4),(5).” The penultimate box had this elaboration: “Monetary bail is prejudice [*sic*].” The elaborations constitute the only details and argument that defendant proffered in support of reversal aside from the form notice of appeal. Rule 604(h)(2) provides that an appellant’s notice of appeal “shall describe the relief requested *and the grounds for the relief requested.*” (Emphasis added.) Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023).

¶ 8

II. ANALYSIS

¶ 9 The State contends that *People v. Inman*, 2023 IL App (4th) 230864, addressed the deficiencies of failing to adequately set forth a proper basis for reversal where a defendant simply checked the box containing conclusory language without providing any facts, argument, or support for the conclusory claim identified by the checked box. The *Inman* court stated:

“Even the new Rule 604(h) requires the notice of appeal to include a description of the relief to be requested ‘and the grounds for the relief requested.’ (Emphasis added.) Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023). This would appear to mean some form of argument is required, along with justification for claiming entitlement to relief—like references to the record, the evidence presented, or, if possible, legal authority.

Unlike Rule 604(c) appeals from bail orders entered before conviction (which governed before the Act), Rule 604(h) has no requirement for a defendant to “present to

the [circuit] court a written motion for the relief sought on appeal” (see Ill. S. Ct. R. 604(c) (eff. July 1, 2017)). This change denies the court an opportunity to create a full and complete record on the issue to be sent to the appellate court for review. Further, under a Rule 604(c) appeal, the motion for review was required to contain everything that transpired before the court on the motion, necessarily including the arguments made before the court (Ill. S. Ct. R. 604(c)(1) (eff. July 1, 2017)) and contain arguments supporting the motion on appeal. *Id.* 604(c)(2)(v). The loss of Rules 341 [(Ill. S. Ct. R. 341 (eff. Oct. 1, 2020), requiring facts and cogent argument] and 604(c), coupled with the new Rule 604(h), creates a demonstrably different process. Yet, even under the unique circumstances created by the Act, we cannot be expected to formulate an argument for defendant out of whole cloth, and we decline to do so. There is a well-established principle: “A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.” (Internal quotation marks omitted.) [*People v.*] *Macias*, 2015 IL App (1st) 132039, ¶ 88 ***. By this we do not mean to say a memorandum as described in Rule 604(h)(2) is required or expected in every case. However, it is reasonable to conclude that the Illinois Supreme Court, by approving the notice of appeal form, expects appellants to at least include some rudimentary facts, argument, or support for the conclusory claim they have identified by checking a box. Even without the application of Rule 341, we doubt Rule 604(h) now requires the appellate court to act as an advocate or seek error on the appellant’s behalf—something heretofore expressly forbidden. See *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 *** (2009) (citing

Obert v. Saville, 253 Ill. App. 3d 677, 682 ***(1993)).” *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 12-13.

¶ 10 We agree with the quote above. However, *Inman* did not cite to the established case law set forth in *Foutch v. O’Bryant*, 99 Ill. 2d 389 (1984): “[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. [Citations.] As there is no transcript of the hearing on the motion to vacate here, there is no basis for holding that the trial court abused discretion in denying the motion. [Citation.]” *Id.*, 99 Ill. 2d 389, 391-92. In this case, as in *Foutch*, there is no transcript of the hearing that is the subject of the appeal. Thus, there is nothing in the record for us to review on the merits.

¶ 11 The State further contends that the filing of a memorandum would not ameliorate the situation because the memorandum must support the arguments made in the notice of appeal. We need not address this argument because it is counterfactual and any comment would be *dicta* at best.

¶ 12 Considering the substantial lack of cogent detail and citation to the record and legal authority to even suggest reversal, we deem any argument forfeited and affirm the October 18, 2023, judgment. Additionally, the lack of the transcript, video, or bystander’s report concerning the hearing on the petition to deny release precludes review and affirms the presumption that no error arose under *Foutch*.²

²It would behoove the State to review the record to determine if it is adequate per *Foutch*

¶ 13

III. CONCLUSION

¶ 14 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County. The State's motion to dismiss, taken with the case, is denied as moot.

¶ 15 Affirmed.

¶ 16

v. O'Bryant.