

Illinois Official Reports

Appellate Court

People v. Johnson, 2015 IL App (3d) 140364

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TRACY EUGENE JOHNSON, Defendant-Appellant.
District & No.	Third District Docket No. 3-14-0364
Filed	December 23, 2015
Decision Under Review	Appeal from the Circuit Court of Rock Island County, No. 13-CF-591; the Hon. Walter D. Braud, Judge, presiding.
Judgment	Vacated and remanded with directions.
Counsel on Appeal	Michael J. Pelletier and Peter A. Carusona, both of State Appellate Defender's Office, of Ottawa, for appellant. John L. McGehee, State's Attorney, of Rock Island (Terry A. Mertel, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE WRIGHT delivered the judgment of the court, with opinion. Justices Holdridge and Lytton concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Tracy Eugene Johnson, appeals from his burglary conviction, 30-year prison sentence, and judgment that ordered defendant to the “pay the costs of prosecution herein.” On appeal, defendant argues that the matter should be remanded with directions for the trial court to review and correct the recorded judgment for “costs” and enter the correct amount of all financial charges in a written order supported by statutory authority. We vacate the order for the “costs of prosecution” and remand with directions.

FACTS

¶ 2 Defendant was charged by information with burglary (720 ILCS 5/19-1(a) (West 2012)).
¶ 3 The charging instrument alleged that defendant committed the offense on June 21, 2013. The case proceeded to a jury trial, and at the conclusion of the trial, the jury found defendant guilty.

¶ 4 On March 28, 2014, the court sentenced defendant to 30 years’ imprisonment. The court awarded defendant credit for time spent in presentence custody from June 26, 2013, to March 28, 2014, a total of 276 days. The written judgment also ordered defendant to “pay the costs of prosecution herein.”

¶ 5 On April 9, 2014, the circuit clerk entered the judgment for costs in the amount of \$409.02. On April 17, 2014, defendant filed a motion to reconsider his sentence which did not challenge the judgment of \$409.02. On April 25, 2014, after the court denied defendant’s motion to reconsider his sentence, defendant filed a notice of appeal.

¶ 6 A payment status information sheet, dated July 16, 2014, is included in the record on appeal. The payment status sheet contains the following information:

“Clerk	100.00
State’s Atty	50.00
Sheriff	67.02
Court	50.00
Automation	15.00
Violent Crime	20.00
Judicial Security	25.00
Document Storage	15.00
Medical Costs	10.00
Youth Diversion	5.00
Clerk Op Deduction	0.25
Drug Court	4.75
Clerk Op Add-Ons	10.00
State Police Svcs	10.00
State Police Ops	15.00
SA Automation Fee	2.00
Probation Ops Fee	10.00
Total	409.02.”

¶ 7 ANALYSIS

¶ 8 The only issue raised on appeal involves a challenge to the monetary component of defendant’s sentence. Defendant asks this court to enter a summary order remanding the matter with direction for the trial court to order any mandated statutory fines and for the circuit clerk to disclose and name any of those additional costs imposed by the clerk. Defendant also asks this court to direct the trial court to award the \$5-per-day presentence incarceration credit for eligible fines. 725 ILCS 5/110-14 (West 2014).

¶ 9 The State opposes a summary remand, in part, because “defendant was ordered to pay costs” and “there is no indication that any fines were ordered.” Contrary to the State’s conclusory assertion, the July 16, 2014, payment status information sheet contained in this record refutes the State’s argument. The payment sheet clearly reveals the following fines were included in the judgment total of \$409.02: \$50 court system fund fine (55 ILCS 5/5-1101(c) (West 2012); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (holding the court systems fund assessment is a fine)); \$20 Violent Crimes Victims Assistance Fund fine¹ (725 ILCS 240/10(b)(1) (West 2012); *People v. Higgins*, 2014 IL App (2d) 120888, ¶ 29 (finding that the clear language of the statute classifies the Violent Crimes Victims Assistance Fund assessment as a mandatory fine)); \$10 medical costs fine (730 ILCS 125/17 (West 2012); *People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 38 (holding that the \$10 “Medical Costs” assessment imposed pursuant to section 17 of the County Jail Act is a fine)); \$5 youth diversion fine (55 ILCS 5/5-1101(e) (West 2012); *People v. Graves*, 235 Ill. 2d 244, 251-54 (2009) (finding that the youth diversion assessment was a fine despite its statutory label as a fee)); and \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2012); *People v. Warren*, 2014 IL App (4th) 120721, ¶ 131 (holding the \$5 drug court assessment, despite its statutory label as a “fee,” was a fine because defendant never participated in drug court and, therefore, the fee did not reimburse the State for the costs of prosecuting defendant)).

¶ 10 The above listed fines may only be imposed by an order of the trial court. *Warren*, 2014 IL App (4th) 120721, ¶ 82 (the imposition of fines is a judicial act). The clerk of the court is a nonjudicial member of the court, and it has no power to levy fines. *People v. Shaw*, 386 Ill. App. 3d 704, 710 (2008). A fine imposed by the circuit clerk is void. *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56. To date, with reference to monetary sentencing errors, our supreme court has held that “[a] challenge to an alleged void order is not subject to forfeiture” and may be raised for the first time in a reviewing court. *People v. Marshall*, 242 Ill. 2d 285, 302 (2011).

¶ 11 We recognize that correctly calculating the financial component of a felony sentence has become a very complex process, in part, because the various fines and costs are codified in several different acts. See *People v. Williams*, 2013 IL App (4th) 120313, ¶ 25 (observing the complexity of the fines and fees created by the legislature and providing a reference sheet to the citation and monetary amount of several fines). In *Williams*, our respected colleagues from the Fourth District Appellate Court included an appendix with their opinion for the purpose of guiding the circuit courts, circuit clerks, prosecutors, and defense attorneys in that district. *Id.* ¶ 25. Similarly, in this case, we follow the precedent established in *Williams* and attach our

¹Because defendant’s offense was committed in 2013, the Violent Crime Victims Assistance Fund fine should be \$100.

own appendix² concerning fines and costs for the purpose of providing guidance to the trial courts in the Third District struggling with the same financial sentencing issues.

¶ 12 In conclusion, we vacate the monetary assessments imposed by the clerk in the amount of \$409.02. We remand the matter to the trial court to review and correct the monetary component of defendant's sentence and allow the \$5-per-day presentence incarceration credit towards the eligible fines.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Rock Island County is vacated and remanded with directions.

¶ 15 Vacated and remanded with directions.

²The appendix in this case is limited to felony dispositions, other than serious traffic offenses, and differs from the broader approach of the Fourth District's appendix in *Williams*. In addition, the appendix attached to this opinion contains updated statutory authority, recent case law, and other useful information which has developed since *Williams* was published in 2013.

Appendix—Mandatory “Add-On” Fines
(for felonies excluding serious traffic offenses)

Fines Eligible for \$5 Per Diem Credit					
Assessed based on date of offense					
1.	Discretionary Felony Fine	730 ILCS 5/5-4.5-50(b)	Eff. 7/1/09	Cannot exceed \$25,000 (or amount specified in statute).	\$ Varies*
2.	Offense Specific Mandatory Minimum Fine			As required by statute when applicable	\$ Varies*
3.	Expungement Juvenile Records Fine	730 ILCS 5/5-9-1.17(a)	Eff. 1/1/10	Shall be added to every criminal sentence and remitted as follows: \$10 to State Police Services Fund, \$10 to State’s Attorney’s Office, and \$10 to Circuit Court Clerk Op. Fund. Fine- People v. Smith , 2013 IL App (2d) 120691, ¶ 16; People v Larue , 2014 IL App (4th) 120595, ¶ 56	\$30.00*
◇ 4.	Violation of Order of Protection Fine	730 ILCS 5/5-9-1.16(a)	Eff. 1/1/09		\$200.00*
5.	Drug-Street Value Fine	730 ILCS 5/5-9-1.1(a) 730 ILCS 5/5-9-1.1-5(a)	Eff. 1/1/82	Determined by Judge based on evidence. Fine- People v. Lewis , 234 Ill. 2d 32, 44-45 (2009) Fine- People v. Bell , 2012 IL App (5th) 100276, ¶ 42	\$ Varies*
6.	Drug-CJIA Projects Fund (Drug Task Force Fund)	730 ILCS 5/5-9-1.1(e) 730 ILCS 5/5-9-1.1-5(c)	Eff. 9/11/05	Fine- People v. Williams , 2014 IL App (3rd) 120240, ¶ 14	\$25.00*
7.	Drug-Prescription Pill/Drug Disposal Fund	730 ILCS 5/5-9-1.1(f) 730 ILCS 5/5-9-1.1-5(d)	Eff. 1/1/12	1/1/12-12/31/15 \$20; After 12/31/15 \$40 Fine- People v. Williams , 2014 IL App (3rd) 120240, ¶ 14	\$ Varies*
8.	Drug Trauma Center Fund	730 ILCS 5/5-9-1.1(b) 705 ILCS 105/27.6(c)	Eff. 7/18/96	Fine- People v. Jones , 223 Ill. 2d 569, 593 (2006) Applies to Cannabis, C/S, and Meth	\$100.00*
9.	Drug Assessment Fine	720 ILCS 550/10.3(a) 720 ILCS 570/411.2(a)	Eff. 1/1/92	Fine- People v. Jones , 223 Ill. 2d 569, 588 (2006) One assessment per case highest assessment to be applied	
				Class X	\$3,000.00*
				Class 1	\$2,000.00*
				Class 2	\$1,000.00*

(* Denotes \$5 Eligible Fines, ◇ Denotes No Cases to Date)

				Class 3 or 4	\$500.00*
◇10	Drug- Contr. Subst. Manufacture Emergency Response Fine	720 ILCS 570/411.4(b)	Eff. 1/1/12	Emergency response = collecting evidence or securing a site where controlled substances were manufactured – per statute “fine”	\$750.00* First Offense \$1,000.00* Second Offense
◇11	Drug- Meth. Manu. Emerg. Response Fine	720 ILCS 646/90(c)	Eff. 1/1/12	Emergency response = collecting evidence or securing a site where meth was manufactured – per statute “fine”	\$2,500.00*
◇12	Drug-Meth Law Enforcement Fine	730 ILCS 5/5-9-1.1-5(b)	Eff. 1/1/06	Meth cases only.	\$100.00*
◇13	Gang Member Fine	730 ILCS 5/5-9-1.19	Eff. 7/13/10		\$100.00*
◇14	Parole Fine	730 ILCS 5/5-9-1.20	Eff. 8/5/11		\$25.00*
15.	Domestic Violence Fine	730 ILCS 5/5-9-1.5	Eff. 1/1/05	Fine- <i>People v. Pohl</i> , 2012 IL App (2d) 100629, ¶ 13	\$200.00*
<p>Local Fines- Eff. Date-date of County Board Resolution <i>People v. Graves</i>, 235 Ill. 2d 234, 252-55 (2009): Legislature conferred authority for County Boards to approve certain “fines” for criminal sentences.</p>					
16.	Court System Fine	55 ILCS 5/5-1101(c)		Fine- <i>People v. Smith</i> , 2013 IL App (2d) 120691, ¶¶ 17-21; <i>People v. Ackerman</i> , 2014 IL App (3d) 120585, ¶30; <i>People v. Larue</i> , 2014 IL App (4th) 120595, ¶70	\$50.00*
17.	Specialty Court Fund	55 ILCS 5/5-1101(d-5)		“On a judgment of guilty or grant of supervision.” Funds Mental Health, Drug, and Veteran’s Court. Fine- <i>People v. Graves</i> , 235 Ill. 2d 244, 255 (2009)	\$10.00*
18.	Peer Court Fund	55 ILCS 5/5-1101(e)		Where Youth Diversion/Peer Court exists. Fine- <i>People v. Graves</i> , 235 Ill. 2d 244, 255 (2009)	\$5.00*
19.	Drug Court Fund	55 ILCS 5/5-1101(f)		Where Drug Court exists Fine- <i>People v. Williams</i> , 2011 IL App (1st) 091667-B, ¶19; <i>People v. Warren</i> , 2014 IL App (4th) 120721, ¶129	\$5.00*

(* Denotes \$5 Eligible Fines, ◇ Denotes No Cases to Date)

20.	Children's Advocacy Center Fund	55 ILCS 5/5-1101(f-5)		Where Child Advocacy Center exists. as set by County Board -\$5-\$30 Fine- <i>People v. Jones</i> , 397 Ill. App. 3d 651, 664 (1st Dist. 2009); <i>People v. Cameron</i> , 2012 IL App (3d) 110020, ¶ 42	\$ amt. per county board *
◇21	CASA Fund	55 ILCS 5/5-1101(f-10)		\$10-\$30 as set by County Board	\$ amt. per county board *
◇22	Judicial Facility Fund	55 ILCS 5/5-1101.3		Will and Kane Counties only	\$25.00*

“Add-On” Fines NOT Eligible for \$5 Per Diem Credit

23.	Medical Costs Fine	730 ILCS 125/17	Eff. 8/14/96	Fine- <i>People v. Larue</i> , 2014 IL App (4th) 120595, ¶ 57	\$10.00
◇24	Domestic Battery Fine	730 ILCS 5/5-9-1.6	Eff. 1/1/92		\$10.00
◇25	Violation of Order of Protection Fine-Family Member	730 ILCS 5/5-9-1.11(a)	Eff. 1/1/98	Assessed if the protected person is a family member	\$20.00
◇26	UW Trauma Center Fund	730 ILCS 5/5-9-1.10	Eff. 7/18/96	Unlawful use of weapon convictions only.	\$100.00
27.	Sexual Offense Fine	730 ILCS 5/5-9-1.7(b)(1)	Eff. 1/1/05	Sex and pornography offenses only. Fine- <i>People v. Smith</i> , 2014 IL App (4th) 121118, ¶¶75-77	\$200.00
28.	Sex Offender Investigation Fund Fine	730 ILCS 5/5-9-1.15	Eff. 6/1/08	Sex and pornography offenses only. Fine- <i>People v. Dalton</i> , 406 Ill. App. 3d 158, 164 (2d Dist. 2010); <i>People v. Smith</i> , 2014 IL App (4th) 121118, ¶81	\$500.00
◇29	Child Porn. Fine	730 ILCS 5/5-9-1.14	Eff. 1/1/08	Child pornography offenses only.	\$500.00
◇30	Arson Fine	730 ILCS 5/5-9-1.12(a)	Eff. 7/10/03	Arson offenses only.	\$500.00
31.	Drug Spinal Cord Injury	730 ILCS 5/5-9-1.1(c)	Eff. 1/1/02	Applies to Cannabis, Meth, Controlled Subs. Fine- <i>People v. Jones</i> , 223 Ill. 2d 569, 599 (2006)	\$5.00

(* Denotes \$5 Eligible Fines, ◇ Denotes No Cases to Date)

32. Violent Crime Victim Assist.	725 ILCS 240/10(b)	Every felony conviction & not only violent offenses. Crimes before 7/16/12, \$4/40 of total eligible fines, crimes after 7/16/12, \$100 Fine- <i>People v. Higgins</i> , 2014 IL App (2d) 120888, ¶ 29; <i>People v. Dillard</i> , 2014 IL App (3d) 121020, ¶ 11; <i>People v. Warren</i> , 2014 IL App (4th) 120721, ¶¶ 133-137	\$100.00 or \$ _____ —
33. Criminal Surcharge	730 ILCS 5/5-9-1(c)	Crimes before 8/12/15 \$10/ 40 of total eligible fines; Crimes after 8/12/15 \$15/40 of total eligible fines. Fine- <i>People v. Jones</i> , 223 Ill. 2d 560, 582-87 (2006)	\$ Varies
34. State's Attorney's Costs	55 ILCS 5/4-2002 55 ILCS 5/4-2002.1 (See Also #44)	Added to every count Downstate: \$30 + \$2 SA Auto Cost; Cook: \$60 + \$2 SA Auto Cost; Cost- <i>People v. Bradford</i> , 2014 IL App (4th) 130288, ¶ 41; <i>People v. Dalton</i> , 406 Ill. App. 3d 158, 164 (2nd Dist. 2010)	\$ Varies
35. Public Defender Auto. Cost	55 ILCS 5/3-4012	Cook County Only Cost- <i>People v. Bowen</i> , 2015 IL App (1st) 132046, ¶ 64	\$2.00

Costs NOT Subject to \$5 Per Diem Credit—use date of sentencing

36. Bond Cost	725 ILCS 5/110-7(f)	Downstate: 10% of Bond Posted Cook: Not more than \$100 Cost- <i>People v. Lange</i> , 102 Ill. 2d 225, 228-29 (1984)	\$ Varies
37. Clerk Filing Cost (based on size of county)	705 ILCS 105/27.1a(w) 705 ILCS 105/27.2(w) 705 ILCS 105/27.2a(w)	Cost- <i>People v. Pohl</i> , 2012 IL App (2d) 100629, ¶¶ 7-9 Cost- <i>People v. Larue</i> , 2014 IL App (4th) 120595, ¶ 66	180,000- 500,000 CF= \$40-\$100 500,000-3,000,000 CF= \$80-\$125 3,000,000+ CF= \$125-\$190
38. Drug Crime Lab Anal. Cost	730 ILCS 5/5-9-1.4(b)	Caution: Cost- <i>People v. White</i> , 333 Ill. App. 3d 777 (2d Dist. 2002); Fine- <i>People v. Williams</i> , 2013 IL App (4th) 120313	\$100.00
◇ 39. Sheriff Costs- Extradition	725 ILCS 5/124A-5	Upon conviction for costs of serving arrest warrant and extradition from other state or county.	\$ Actual Cost
◇ 40. Sheriff Costs-	55 ILCS 5/4-5001	Costs to bring offender from jail to court. \$10 per court appearance.	\$10.00/ Ct App.

(* Denotes \$5 Eligible Fines, ◇ Denotes No Cases to Date)

◇41	Court Security (Services) Cost	55 ILCS 5/5-1103	One Cost per felony complaint. \$1-\$25, as set by county board resolution. Caution See <i>People v. Graves</i> , 235 Ill. 2d 244, 252-55 (2009): Legislature has conferred authority upon County Boards to approve fines to be imposed as part of criminal sentences	\$ Varies per County Board Resolution
42.	Clerk Automation Cost	705 ILCS 105/27.3a(1)	One Cost per felony complaint. \$1-\$25, as set by county board resolution. Cost- <i>People v. Martino</i> , 2012 IL App (2d) 101244, ¶ 30; Caution See <i>People v. Graves</i> , 235 Ill. 2d 244, 252-55 (2009): Legislature has conferred authority upon County Boards to approve fines to be imposed as part of criminal sentences	\$ Varies per County Board Resolution
43.	Clerk Document Storage Cost	705 ILCS 105/27.3c(a)	One Cost per felony complaint. \$1-\$25, as set by county board resolution. \$1-\$25. Cost- <i>People v. Tolliver</i> , 363 Ill. App. 3d 94, 97 (1st Dist. 2008). Cost- <i>People v. Martino</i> , 2012 IL App (2d) 101244, ¶ 30 Cost- <i>People v. Larue</i> , 2014 IL App (4th) 120595, ¶ 62	\$ Varies per County Board Resolution
44.	State's Attorney's Costs	55 ILCS 5/4-2002 55 ILCS 5/4-2002.1 (See Also #34)	Downstate: \$10 Prelim. Hrg. Cost; \$25/ day of trial Cook: \$20 Prelim. Hrg. Cost; \$50/ day of trial Cost- <i>People v. Dalton</i> , 406 Ill. App. 3d 158, 164 (2nd Dist. 2010)	\$ Varies
45.	DNA Analysis Cost	730 ILCS 5/5-4-3(j)	Does not apply if defendant has been ordered to pay DNA Cost in a prior case. Cost- <i>People v. Johnson</i> , 2011 IL 111817, ¶ 28	\$250.00

CAUTION: Amounts authorized by Clerks Act without reference in Crim. Code or Code of Corrections-

46.	State Police Ops. Assistance Fund	705 ILCS 105/27.3a(1.5)	Applies only where County has Clerk Automation Cost Amount Varies (\$0-\$15) Fine- <i>People v. Moore</i> , 2014 IL App (1st) 112592-B, ¶ 46 Fine- <i>People v. Wynn</i> , 2013 IL App (2d) 120575, ¶ 13 Fine- <i>People v. Larue</i> , 2014 IL App (4th) 120595, ¶ 56	\$ Varies based on amount of automation fund*
47.	Probation Ops. Fund	705 ILCS 105/27.3a(1.1)	Fine or Cost? <i>Caution People v. Rogers</i> , 2014 IL App 4th 121088, ¶ 39	\$10.00 *
◇48	Arson Burn Victim Relief	705 ILCS 105/27.6(p)	Eff. 1/1/16 Arson offenses only. Remitted to George Bailey Memorial Fund.	\$250.00
◇49	State Police Merit Board Safety Fund	705 ILCS 105/27.6(n)	Eff. 1/1/13 Any person convicted of a "violation of the Criminal Code".	\$15.00

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