FOURTH DIVISION
MARCH 29, 2012

1-10-0549



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. 08CR01600 |
| | ) | |
| CHAD HARDY, | ) | Honorable |
| | ) | John J. Scotillo, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

*HELD*: Circuit court judgment denying defendant's post-plea motions reversed and the cause remanded where there was no strict compliance with Supreme Court Rule 604(d). Court order imposing fines, fees, and costs modified to vacate various inapplicable and improper monetary assessments.

¶1 Defendant Chad Hardy appeals orders of the circuit court denying his post-plea motions to withdraw his guilty plea to three counts of predatory criminal sexual assault and to reconsider his cumulative sentences of 30 years' imprisonment. On appeal, defendant contends that the

court failed to abide by the requirements of Supreme Court Rule 604(d), which governs post-plea proceedings, and that the courts orders denying his post-plea motions must be reversed and the cause remanded for proceedings in conformance with Rule 604(d). Defendant also contests several of the fines and fees assessed against him by the circuit court. For the reasons set forth herein, we reverse the judgment of the circuit court and remand the cause for proceedings consistent with this disposition and modify the court's order imposing various fines, fees, and costs to vacate several inapplicable and improper monetary assessments.

¶2 On December 20, 2007, defendant was arrested and charged with 6 counts of predatory criminal sexual assault, 12 counts of criminal sexual assault, and 3 counts of aggravated criminal sexual abuse to his 12-year-old daughter. The offenses were alleged to have occurred between September 1, 2007, and December 19, 2007. Following his arrest, defendant was questioned by detectives and confessed to sexually assaulting his daughter on multiple occasions. Defendant subsequently spoke to an Assistant State's Attorney and signed a written inculpatory statement.

¶3 Thereafter, defendant, with the assistance of retained private counsel, filed a motion to suppress his statements, arguing that the statements were made after he elected to remain silent and consult with an attorney. Moreover, defendant alleged that he confessed to sexually assaulting his daughter in response to material misrepresentations and promises of leniency made by the investigating officers. Defendant also filed a motion to quash his arrest and suppress evidence. After conducting hearings on these pre-trial motions, the trial court denied both motions. While he was still represented by private counsel, defendant also filed *pro se* motions alleging violation of the Speedy Trial Act and seeking dismissal of the charges against him with

prejudice. These motions were similarly denied and a trial date was set.

¶4 On September 30, 2009, defendant appeared before the trial court and requested a Rule 402 Conference. The trial court granted the request and admonished defendant as follows:

> "Your attorney is asking that I participate in a pretrial conference where we talk about a potential sentence should you enter a plea of guilty. At the conference will be your lawyer, the prosecutor and myself.
>
> The prosecutor will talk about things that he wants me to consider in your sentencing like your criminal history, if any, or other factors in sentencing that I ordinarily would not hear about during the trial. And your lawyer will talk about things that he wants me to consider in sentencing like your volunteer work in the community, or your church, or your education, or your job, your health, things of that nature.
>
> At the conclusion of the conference then they will tell me what sentence they have agreed upon. Then I will tell them if I agree with that.
>
> You are under no obligation to plead guilty. You can still have your trial on October 20th in front of the Court or in front of a jury, whichever you prefer. ***"

¶5 After admonishing defendant, the parties commenced a Rule 402 conference, which was continued to the next court date, October 8, 2009. On that date, the conference concluded, and defendant was offered a sentence of 30 years' imprisonment in exchange for a guilty plea. Defendant requested time to think about the offer and the cause was continued.

¶6 The parties returned to court on October 19, 2009. At that time, the State made a motion to *nolle pros* 18 of the 21 counts against defendant. Defendant, in turn, rejected the offer made to

him at the conclusion of the Rule 402 conference, and elected to enter a blind guilty plea to the remaining three charges. The trial court then admonished defendant. Specifically, the court informed defendant of the minimum and maximum sentences for each of the counts, explained that the sentences would be served consecutively and that defendant would be subject to a mandatory supervised release term after he finished serving his sentence. The court also reiterated that defendant was entitled to a trial and that he was not required to enter a guilty plea. After ascertaining that defendant was aware of his rights and that he was not being coerced into pleading guilty, the court accepted defendant's signed jury waiver form.

¶7 The State then presented a factual basis for the three remaining counts of predatory sexual assault and the court found that there was a sufficient factual basis to support defendant's guilty plea. Defendant's sentencing hearing immediately followed. The parties presented evidence in aggravation and mitigation and defendant made a statement in elocution. After hearing the arguments and considering the evidence presented by the parties in aggravation and mitigation, the court sentenced defendant to 10 years' imprisonment for each of the three counts of predatory sexual assault, the sentences to be served consecutively for a total of 30 years' imprisonment. The court also imposed various fines, fees and costs on defendant, which totaled $1390.02. Defense counsel immediately filed a motion to reconsider defendant's sentence but did not file a certificate in accordance with Supreme Court Rule 604(d). Defense counsel elected not to argue the merits of the motion and the motion to reconsider defendant's sentence was denied. Defense counsel filed a notice of appeal.

¶8 Thereafter, on November 13, 2009, defendant filed a timely *pro se* motion to withdraw

his guilty plea. In the motion, defendant asserted that he "was offered a deal" by the State to plead guilty to one count of predatory sexual criminal assault in exchange for a sentence of 10 years' imprisonment, of which he would only required to serve 85% of his prison term. Defendant further alleged that he wanted to accept the State's offer, but that the judge denied the State's offer and defense counsel entered into a blind plea, which left defendant feeling "duped and conspired against so that the judge and the [S]tate and defense attorney could get a conviction."

¶9 The State filed a response to defendant's motion, asserting that a criminal defendant has no absolute right to withdraw a guilty plea and that "defendant states no apprehension of the facts or of the law that would allow this court to vacate his plea of guilty, and neither does he allege any emotional duress or coercion." The State further argued that defendant set forth no facts or argument that his guilty plea stemmed from the wrongful advice of defense counsel or that counsel was ineffective and urged the court to deny defendant's motion to withdraw his guilty plea.

¶10 The court subsequently conducted a "hearing" on defendant's motion. Defendant appeared *pro se.* His guilty plea counsel was not present and the court did not inquire whether defendant desired the assistance of counsel, had funds for counsel, or whether defendant wanted the court to appoint counsel to represent him. The court ultimately denied defendant's motion, finding that he had been properly admonished and that "[n]owhere in the motion, nowhere in the motion [did defendant] suggest that [he was] not guilty of the charges" to which he pled guilty. This appeal followed.

¶11 ARGUMENT

¶12 I. Post-Plea Motions

¶13 On appeal, defendant maintains that the trial court's denial of his post-plea motions to reconsider his sentence and to withdraw his guilty plea must be reversed because the trial court failed to ensure that there was strict compliance with Supreme Court Rule 604(d). Defendant first observes that defense counsel failed to abide by the requirements of Supreme Court Rule 604(d) and file a certificate indicating that he conferred with defendant to ascertain defendant's contentions of error concerning his guilty plea when counsel filed the motion to reconsider defendant's sentence. Moreover, the court failed to abide by the mandate of Rule 604(d) when it ruled on defendant's subsequent *pro se* motion to vacate his guilty plea when defendant was not represented by counsel and the court did not inquire whether defendant desired the assistance of counsel. Given counsel's failure to file a Rule 604(d) certificate and the trial court's failure to make the requisite inquiry, defendant argues that the cause must be remanded to the circuit court to allow him to file a new post-plea motion and for counsel to file the requisite certificate.

¶14 The State acknowledges that a Rule 604(d) certificate was never filed by counsel in support of either of defendant's post-plea motions; however, the State argues that a certificate was not necessary because defendant was represented by private counsel. Based on the plain language of the rule, the State maintains that the certificate requirement only applies to appointed counsel and that "private counsel is not required to file a Rule 604(d) certificate." Moreover, the State argues that the circuit court did not err in failing to admonish defendant about his right to counsel or appoint counsel to assist defendant with his motion to vacate his guilty plea prior to

denying defendant's *pro se* motion.

¶15 The interpretation of a supreme court rule is reviewed *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007); *People v. Hayes*, 409 Ill. App. 3d 612, 626 (2011). Similarly, the issue of whether the trial court and defense counsel abided by the requirements of Rule 604(d) is also subject to *de novo* review. *People v. Grice*, 371 Ill. App. 3d 813, 815 (2007); *People v. Smith*, 365 Ill. App. 3d 356, 357 (2006).

¶16 Rule 604(d), in pertinent part, provides as follows:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which the sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. *** The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel. If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. *The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the*

*trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings*. The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed ***." (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶17 Our supreme court has explained that the purpose of Rule 604(d) is to

" 'ensure that before a criminal appeal can be taken from a plea of guilty, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceedings and dehors the record, but nevertheless were unwittingly given sanction in the courtroom. Rule 604(d) provides for fact finding to take place at a time when witnesses are still available and memories are fresh. [Citation.] A hearing under Rule 604(d) allows a court to immediately correct any improper conduct or any errors of the trial court that may have produced a guilty plea. The trial court is the place for fact finding to occur and for a record to be made concerning the factual basis upon which a defendant relies for the grounds to withdraw a guilty plea. If the motion to withdraw the plea is denied, that decision can be considered on review.' " *People v. Janes*, 158 Ill. 2d 27, 31 (1994), *quoting People v. Wilk*, 124 Ill. 2d 93, 104 (1988).

¶18 Given the important purpose served by Rule 604(d), strict compliance with the rule is

required. *Janes*, 158 Ill. 2d at 33. If defense counsel neglects to file a Rule 604(d) certificate entirely or if a certificate is filed, but is deficient, the proper remedy is to remand the cause to the trial court to allow for "(1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing." *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011); see also *Janes*, 158 Ill. 2d at 33.

¶19 Here, the record reflects that following defendant's sentencing hearing, defense counsel immediately filed a motion to reconsider defendant's sentence, but did not file a Rule 604(d) certificate. Upon the denial of this post-plea motion, defendant subsequently filed his own *pro se* motion to withdraw his plea of guilty without the assistance of counsel, which the trial court also denied without ascertaining whether defendant desired the assistance of counsel. The record is thus clear that no 604(d) certificate was filed in connection with either of defendant's post-plea motions and that there was no strict compliance with Rule 604(d).

¶20 The State, however, maintains that the absence of a Rule 604(d) certificate in this case does not warrant reversal and remand to the trial court, because defendant had a privately retained attorney, and did not receive the assistance of appointed counsel. The State argues that Rule 604(d) only requires appointed counsel to consult with a defendant, examine court proceedings, amend a post-plea motion, and submit a certificate that certifies that these actions were undertaken. In support, the State relies primarily on the following sentence from the rule: "The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule

402(e) be furnished the defendant without cost." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Because this sentence immediately proceeds the sentence regarding the certificate requirement, the State argues that the certificate requirement only applies to attorneys who are appointed to represent indigent defendants.

¶21 Although there is a plethora of case law recognizing that the certificate requirement set forth in Rule 604(d) must be strictly complied with, there have only been three cases that have specifically addressed the issue of the applicability of the rule to private versus appointed attorneys.[1] *People v. Whitlow*, 86 Ill. App. 3d 858 (1980), was the first case to address this issue. There, the Third District concluded that only appointed counsel was required to file a Rule 604(d) certificate. *Whitlow*, 86 Ill. App. 3d at 875. However, the court reached this decision without engaging in any analysis of the rule or the underlying rationale for the certificate requirement. Thereafter, in *People v. Edwards*, 228 Ill. App. 3d 492 (1992), the Fourth District explicitly rejected the State's argument that Rule 604(d)'s certificate requirement only applies to appointed counsel, reasoning: "The State's interpretation, however, would defeat one of the

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[1] The State maintains that our supreme court implicitly interpreted the certificate requirement in Rule 604(d) to apply only to indigent defendants in *People v. Lindsay*, 239 Ill. 2d 522 (2011). The court, however, was not called upon to interpret the applicability of the rule's certificate requirement in that case. Rather, the court clarified and set forth the proper remedy for a Rule 604(d) certificate violation. *Id*. at 531. Accordingly, we do not find *Lindsay* to be controlling supreme court authority about the applicability of the certificate requirement to private counsel.

purposed underlying this rule–to ensure that a defendant's constitutional rights are protected. [Citation.] We do not believe that the supreme court intended to provide greater protection to indigent defendant's than to defendants who are able to retain private counsel." *Edwards*, 228 Ill. App. 3d at 498. Accordingly, because the Rule 604(d) certificate filed by the defendant's retained counsel failed to indicate that counsel had examined the court proceedings pertaining to the defendant's guilty plea and did not strictly comply with the rule, the Fourth District reversed the trial court's denial of the defendant's motion to withdraw his plea and remanded the cause for further proceedings. *Id*. at 500. More recently, when called upon to examine this issue in *People v. Cooper III.*, 2011 Ill. App. (4th) 100972, the Fourth District reaffirmed its prior ruling in *Edwards*, and reiterated that "[b]y its terms, the rule is not limited to appointed counsel and indigent defendants." *Cooper III.*, 2011 Ill. App. (4th) 100972, ¶ 14.

¶22 We are in agreement with the well-reasoned analysis undertaken by the Fourth District. Although the sentence immediately preceding the certificate requirement explicitly refers to indigent defendants, the language setting forth the certificate requirement is not specifically limited to appointed counsel; rather it states in broad terms that "the defendant's attorney shall file" a certificate. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Moreover, interpreting the rule in the manner urged by the State would perpetuate a "double standard" (*Edwards*, 228 Ill. App. 3d at 398) between indigent and non-indigent defendants who enter guilty pleas and would fail to effectuate the underlying purposes of Rule 604(d), which are to correct any errors or impropriety that took place during guilty plea proceedings (*Janes*, 158 Ill. 2d at 31), to protect the constitutional rights of criminal defendants (*Edwards*, 228 Ill. App. 3d at 498) and safeguard

against ineffective assistance of counsel (*In re Omar A.*, 335 Ill. App. 3d 732, 733 (2002)). Accordingly, because counsel failed to file a Rule 604(d) certificate in connection with defendant's post-plea motion to reconsider his sentence, the trial court's order denying that motion must be reversed and the cause remanded to allow for an opportunity to file a new motion, the filing of the requisite certificate, and a new motion hearing. *Cooper III.*, 2011 Ill. App. (4th) 100972, ¶ 16; *Edwards*, 228 Ill. App. 3d at 500.

¶23 We also find that remand is warranted because the circuit court ruled on defendant's *pro se* motion to withdraw his guilty plea without inquiring whether defendant was, at that time, represented by counsel, and if not, whether defendant desired the assistance of counsel or had funds to retain an attorney. Rule 604(d) is clear that once a defendant files a *pro se* post-plea motion, a trial court is required to "determine whether the defendant is represented by counsel, and if the defendant is indigent and requires counsel, the trial court shall appoint counsel." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). The trial court is obligated to inquire into a *pro se* defendant's desire for counsel and appoint counsel "even without a specific request from the defendant, unless the trial court finds that the defendant knowingly waived the right to appointed counsel." *People v. Smith*, 365 Ill. App. 3d 356, 359 (2006); see also *People v. Edwards*, 197 Ill. 2d 239, 256 (2001) ("Once a *pro se* defendant notifies the circuit court that he wishes to withdraw his guilty plea and appeal, the protections offered by Rule 604(d), *i.e.*, the appointment of counsel and the attorney certificate, are *automatically triggered*.") (Emphasis added.) The court's obligation to make this inquiry and appoint counsel exists because Rule 604(d) is a condition precedent to preserve a defendant's right to appeal his guilty plea and thus, " 'fundamental

fairness requires that a defendant be afforded a full opportunity to explain his allegations and that he have assistance of counsel in preparing the motion.' " *Edwards*, 197 Ill. 2d at 256, *quoting People v. Velasco*, 197 Ill. App. 3d 589, 591-92 (1990). Accordingly, if a trial court dismisses a defendant's *pro se* post-plea motion without obtaining a knowing waiver of the defendant's right to counsel, the judgment must be reversed and the cause remanded for proceedings that comply with Rule 604(d). See, *e.g.*, *Smith*, 365 Ill. App. 3d at 361; *People v. Hinton*, 362 Ill. App. 3d 229, 234 (2005).

¶24 Here, retained counsel represented defendant during the Rule 402 conference and during defendant's subsequent blind guilty plea to three counts of predatory sexual criminal assault. Following the plea, as we have set forth above, counsel filed a timely motion to reconsider defendant's sentence but failed to file a 604(d) certificate. Upon the court's denial of the motion, counsel subsequently filed a timely notice of appeal. Defendant then filed a motion to withdraw his guilty plea. This motion was filed *pro se*, without the representation of private or appointed counsel, and the trial court denied the motion without inquiring whether defendant desired the assistance of counsel on his second post-plea motion.

¶25 The State suggests that the trial court did not err in failing to ask defendant whether he sought the assistance of counsel prior to denying his *pro se* motion to withdraw his guilty plea, arguing that "the trial court could have reasonably presumed that the appointment of counsel was unnecessary" because defendant had been represented by counsel prior to and during the guilty plea proceedings and there was "no indication in the record that trial counsel officially withdrew." We disagree. As we have stated previously, Rule 604(d) requires strict compliance.

*Janes*, 158 Ill. 2d at 33. The mere fact that defendant had been represented by counsel during earlier proceedings did not provide the court with grounds to avoid strictly complying with Rule 604(d) when defendant filed his *pro se* motion to withdraw his guilty plea. See, *e.g.*, *Hinton*, 362 Ill. App. 3d at 233-34 (recognizing that the option a defendant chooses to exercise regarding counsel at one stage of the plea process does not carry over to subsequent post-plea proceedings and that courts must strictly comply with Rule 604(d) and make the necessary inquiry when a defendant files a *pro se* post-plea motion). Moreover, given that defendant filed the motion without counsel, argued that defense counsel was one of the parties who "duped and conspired against" him, and that defendant appeared alone to argue the motion, we disagree with the State that it would have been "reasonable" to assume that defendant was still represented by counsel and that an inquiry into defendant's desire for counsel was unnecessary. Indeed, any assumption by the trial court regarding defendant's indigence or representation status would have been improper because Rule 604(d) does not allow for assumptions; rather, it calls for strict compliance. *Janes*, 158 Ill. 2d at 33.

¶26 We similarly reject the State's argument that the court was not required to make an inquiry about defendant's representation status because his *pro se* motion to withdraw his guilty plea was of no merit and was merely duplicative of his prior motion to reconsider his sentence. This court has held that when a defendant's *pro se* post-plea motion is denied without the court making in inquiry into the defendant's desire for counsel, it is improper for a reviewing court to weigh the merits of the arguments set forth in the *pro se* motion because " '[i]t would be contrary to the purpose of [Rule 604(d)] to draw a legal conclusion about a defendant's [postplea] motion

before he has had the opportunity to consult with an attorney to ensure that there is legally 'adequate presentation of any defects' in his guilty plea proceedings.' " *Smith*, 365 Ill. App. 3d at 361, *quoting People v. Barnes*, 291 Ill. App. 3d 545, 551 (1997). Ultimately, because the trial court denied defendant's *pro se* motion to vacate his guilty plea without inquiring into defendant's desire for counsel and without receiving a knowing waiver of defendant's right to counsel, we conclude that this case must be remanded. *Smith*, 365 Ill. App. 3d at 361; *Hinton*, 362 Ill. App. 3d at 234.

¶27 II. Fines and Fees

¶28 Defendant next disputes various fines and fees that were imposed upon him by the trial court. He first disputes the court's imposition of the $25 Traffic Court Supervision fee (625 ILCS 5/16-104(c) (West 2008)), the $20 Serious Traffic Violation fine (625 ILCS 5/16-104(d) (West 2008))[2], and the $5 Court System fee for violating a provision of the Illinois Vehicle Code (55 ILCS 5/5-1101(a) (West 2008)). Defendant argues, and the State concedes, that these fines and fees may only be imposed on persons convicted of violating provisions in the Illinois Vehicle Code and that the court erred in imposing these assessments because he was not convicted of any violation of the Illinois Vehicle Code.

¶29 The propriety of the trial court's imposition of fines and fees raises a question of statutory interpretation, which is subject to *de novo* review. *People v. Price*, 375 Ill. App. 3d 684, 697

[2] In his brief, defendant argues that the trial court erroneously imposed a $30 Serious Traffic Violation fine. However, defendant's sentencing order indicates that the monetary amount imposed was actually $20.

(2007).

¶30 We agree with the parties that the trial court erred in imposing the $25 Traffic Court Supervision fee (625 ILCS 5/16-104(c) (West 2008)), the $20 Serious Traffic Violation fine (625 ILCS 5/16-104(d) (West 2008)) and the $5 Court System fee (55 ILCS 5/5-1101(a) (West 2008)). The plain language of each provision applies to persons found guilty of some kind of vehicular offense. See 625 ILCS 5/16-104(c) (applies to "[a]ny person who receives a disposition of court supervision for a violation of any provision of [the Illinois Vehicle] Code"); 625 ILCS 5/16-104(d) (applies to "[a]ny person who is convicted of, pleads guilty to, or is placed on supervision for a serious traffic violation"); 55 ILCS 5/5-1101 (requires that the fee be paid by a "defendant on a judgment of guilty or a grant of supervision for violation of the Illinois Vehicle Code"). Because defendant was not convicted of a vehicle code offense, the imposition of these monetary assessments were improper and are hereby vacated. See, *e.g.*, *People v. Price*, 375 Ill. App. 3d 684, 698 (2007) (vacating the aforementioned court system fee because the defendant "did not commit any offense enumerated in the Vehicle Code").

¶31 Defendant next asserts that the court erred in imposing a $30 Children's Advocacy Center assessment (55 ILCS 5/5-1101(f-5) (West 2008)). Defendant, argues and the State agrees, that this assessment was not in effect at the time of his offense, and thus the imposition of the fine in this case, violated the constitutional prohibition against *ex post facto* laws.

" 'The constitutional prohibition against *ex post facto* laws prevents the punishment for an offense being increased by an amendatory act taking effect after the offense has been committed.' " *People v. Bosley*, 197 Ill. App. 3d 215, 220 (1990), *quoting People v. Ostrowski*, 293 Ill. 91, 93

(1920). The Children's Advocacy Center assessment was added to the statute and went into effect on January 1, 2008. See Pub. Act 95-103 § 5 (eff. Jan 1, 2008) (amending 55 ILCS 5/5-1101). This assessment is a pecuniary punishment and, as such, is subject to the prohibition against *ex post facto* laws. *People v. Maxwell*, 2011 Ill. App. (4th) 100434, ¶ 104; *People v. Williams*, 405 Ill. App. 3d 958, 965-66 (2010).

¶32 In this case, the offenses underlying defendant's convictions occurred between September 1, 2007, and December 19, 2007. Accordingly, because the statute authorizing the Children's Advocacy Center assessment was not in effect at the time defendant committed the offenses, the imposition of this fine against defendant violated the prohibition against *ex post facto* laws and must be vacated. See *Maxwell*, 2011 Ill. App. (4th) 100434, ¶ 105 (vacating the Children's Advocacy Center Assessment imposed against the defendant on *ex post facto* grounds because the statute authorizing the assessment was not in effect at the time the defendant committed the offenses).

¶33 Defendant next asserts that the $500 Sex Offense fine (730 ILCS 5/5-9-1.15 (West 2008))[3] imposed by the trial court must also be vacated because, it too, violates the prohibition against *ex post facto* laws. Because this fine became effective on June 1, 2008, and was thus not in a part of the Unified Code of Corrections at the time he committed the charged offenses,

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[3] The order imposing fines, fees, and costs incorrectly cites 730 ILCS 5/5-9-1.14 (West 2008) as the statute pursuant to which the court imposed the Sex Offense fine; however, the fine is actually imposed under section 5-9-1.15 of the Unified Code of Corrections (730 ILCS 5/5-9-1.15 (West 2008)).

defendant argues that the court erred in imposing this assessment.

¶34 The State, citing *People v. Dalton*, 406 Ill. App. 3d 158 (2010), argues that only a portion of the $500 needs to be vacated on *ex post facto* grounds. Because $150 of the Sex Offense assessment is allocated to compensate the State's Attorney's Office and the Clerk of the Circuit Court for services and costs incurred as a result of prosecuting the defendant, these fines do not serve a pecuniary purpose and do not violate *ex post facto* principles. The State concedes, however, that the remaining $350 assessed under section 5-9-1.15 of the Unified Code of Corrections, which is allocated to the Sex Offender Investigation Fund, constituted an impermissible fine and should be vacated on *ex post facto* grounds.

¶35 Section 5-9-1.15 of the Unified Code of Corrections became effective on June 1, 2008. Pub. Act 95-600, § 15, eff. June 1, 2008. In pertinent part, it provides:

> "(a) There shall be added to every penalty imposed in sentencing for a sex offense as defined in Section 2 of the Sex Offender Registration Act an additional fine in the amount of $500 to be imposed upon a plea of guilty, stipulation of facts or finding of guilty resulting in a judgment of conviction or order of supervision.
>
> (b) Such additional amount shall be assessed by the court imposing sentence and shall be collected by the circuit clerk in addition to the fine, if any, and costs in the case. * * * The circuit clerk shall retain 10% of such penalty for deposit into the Circuit Court Clerk of Operation and Administrative Fund created by the Clerk of the Circuit Court to cover the costs incurred in administering and enforcing this Section. Such additional penalty shall not be considered a part of the fine for purposes of any reduction in the fine for time

served either before or after sentencing.

(c) *** After deducting from the gross amount levied the fees and additional penalty provided for herein, less any other additional penalties provided by law, the clerk shall remit $100 of each $500 additional fine imposed under this Section to the State's Attorney of the county which prosecuted the case or the local law enforcement agency that investigated the case leading to the defendant's judgment of conviction or order of supervision and after such remission the net balance remaining to the entity authorized by law to receive the fine imposed in the case.

(d) Subject to appropriation, moneys in the Sex Offender Investigation Fund shall be used by the Department of State Police to investigated alleged sex offenses and to make grants to local law enforcement agencies to investigate alleged sex offenses as such grants are awarded by the Director of State Police under rules established by the Director of State Police." 730 ILCS 5/5-9-1.15 (West 2008).

¶36 In *Dalton*, the Second District reviewed the propriety of $500 Sex Offense assessment imposed upon the defendant, and found that only a portion of the assessment was punitive in nature and violated *ex post facto* principles. *Dalton*, 406 Ill. App. 3d at 164. In making this determination, the court reiterated that "[t]he prohibition against *ex post facto* laws applies only to laws that are punitive. It does not apply to fees, which are compensatory instead of punitive." *Id*. at 163. The court then observed that pursuant to subsection (b) of the statute, 10% of the $500 imposed upon the defendant was allocated to Circuit Court Clerk ($50) (730 ILCS 5/5-9-1.15(b) (West 2008)) and reasoned that the sum was merely "compensation for services and costs

that [were] a consequence of the defendant's conviction," and was not punitive in nature. *Id.* at 164. Accordingly, the court found that the $50 allocated to the Circuit Court Clerk did not violate *ex post facto* principles and was properly imposed. *Id.* The court similarly upheld the $100 sum that was earmarked to the State's Attorney's office that prosecuted the defendant (730 ILCS 5/5-9-1.15(c) (West 2008)), reasoning: "By going directly to the State's Attorney who prosecuted the matter, the assessment is compensation for professional services related to the case. Accordingly, it is a fee, it is not subject to *ex post facto* limitations, and it was properly imposed. *Id.* The court, did however, find that the $350 sum allocated to the Sex Offender Investigation Fund pursuant to subsection (d) (730 ILCS 5/5-9-1.15 (West 2008)) was punitive in nature and that its imposition violated *ex post facto* principles, explaining: "That assessment was not assessed as compensation for professional services related to the prosecution. Instead, it is the fine that remains after fees are withheld for the clerk of the circuit court and the State's Attorney." *Id.* Accordingly, the court vacated the $350 Sex Offender Investigation Fund fine. *Id.*

¶37 We agree with the analysis undertaken by the *Dalton* court. The $50 sum allocated to the Clerk of the Circuit Court and the $100 sum allocated to the Cook County State's Attorney's Office are not punitive assessments; rather, they are clearly charges designated by the legislature to compensate the Circuit Court Clerk and the State's Attorney's Office for the cost of labor and services incurred as a collateral consequence of defendant's conviction. *Dalton*, 406 Ill. App. 3d at 164. Because these are compensatory, rather than punitive charges, they need not be vacated on *ex post facto* grounds. *Id.* The remaining $350 allocated to the Sex Offender Investigation Fund, however, is clearly punitive in nature, as it is not designed to compensate any entity for

services and costs that were incurred in securing defendant's conviction. *Id*. Accordingly, the $350 Sex Offender Investigation Fund fine imposed upon defendant is vacated because it violates *ex post facto* principles.

¶38 As a final matter, defendant, in his opening brief, cited to section 110-14 of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure), and argued that he is entitled to apply his $5-per-day-pre-sentencing credit to various other fines imposed upon him by the trial court. 725 ILCS 5/110-14 (West 2008). In his reply brief, however, defendant acknowledges that he is not entitled to apply his pre-sentencing custody credit toward his fines because he committed a sexual assault and the statute explicitly precludes persons who commit a sexual assault from applying pre-sentencing custody credit toward their fines. Given defendant's concession, we need not address this issue.

¶39 CONCLUSION

¶40 For the aforementioned reasons, we reverse the judgment of the circuit court and remand for proceedings consistent with this disposition. We also vacate defendant's Traffic Court Supervision fee, Serious Traffic Violation fine, Court System fee, Children's Advocacy Center assessment, and his Sex Offender Investigation Fund fine.

¶41 Reversed and remanded in part and vacated in part.