

¶ 5 In May 2010, defendant entered a guilty plea to the unlawful delivery of less than 15 grams of cocaine within 1,000 feet of a school. 720 ILCS 570/407(b)(1) (West 2010). In exchange for defendant's guilty plea, the State agreed to dismiss four counts in a separate case (McLean County case No. 10-CF-60), one additional misdemeanor charge, and two traffic violations. Additionally, the State agreed to a \$150 street-value fine, a mandatory \$3,000 drug treatment assessment, a mandatory \$100 Illinois State Police lab fee, and a mandatory \$100 drug trauma fund fee. The State did not, however, agree to any other recommendation as to defendant's sentence.

¶ 6 At defendant's guilty plea hearing, the trial court reviewed the parties' agreement and stated, as follows:

"[T]he sentence in this case is partially negotiated, but only as to the financial terms. You would be ordered to pay \$150.00 street value fine *plus court costs and fees*. *The fees would include* a \$3,000.00 drug treatment assessment, \$100.00 lab fee, and a \$100.00 Drug Trauma Fund Fine." (Emphases added.)

Other than the statutorily authorized fine of \$500,000 for the crime charged, the court did not inform defendant of any other fines.

¶ 7 Following a July 2010 sentencing hearing, the trial court sentenced defendant to 15 years in prison. In its written order, the court imposed, in pertinent part, a \$15 child advocacy center fee (55 ILCS 5/5-1101(f-5) (West Supp. 2009)), a \$10 drug court fee (55 ILCS 5/5-1101(d-5) (West Supp. 2009)), and a \$40 statutory surcharge (730 ILCS 5/5-9-1(c) (West 2010)). Defendant appealed, and this court remanded (1) to allow defendant the opportunity to file a new

postplea motion, (2) for a new hearing on the motion, and (3) for strict compliance with Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2006)). *People v. Gaston*, No. 4-10-0748 (Mar. 30, 2011) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 8 On remand, defendant filed a "Motion to Withdraw Plea and Motion to Reconsider Sentence." In July 2011, the trial court denied that motion, adding that a "reasonable characterization" of the parties' agreement was that it was a partially negotiated plea "because there [were] sentencing concessions made."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues that (1) his sentence is excessive and (2) he was denied the benefit of his guilty plea bargain. We address defendant's contentions in turn.

¶ 12 A. Defendant's Excessive-Sentence Claim

¶ 13 Defendant contends that his sentence is excessive in light of his potential for rehabilitation. Because we agree with the State that under Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2006)), defendant may only challenge his sentence by withdrawing his plea, we reject defendant's contention.

¶ 14 Initially, we note that the parties dispute the classification of defendant's guilty plea for the purpose of whether defendant is required to file a motion to reconsider sentence or a motion to withdraw plea. Defendant contends that he entered an "open" plea because the parties made no agreement as to the length of his sentence. The State responds that because it agreed to dismiss multiple charges and made sentencing concessions, defendant entered a partially negotiated plea.

¶ 15 The Illinois Supreme Court has recognized four types of guilty pleas. A defendant enters an "open" plea when he pleads guilty without receiving any promises from the State. *People v. Scott*, 363 Ill. App. 3d 884, 890, 844 N.E.2d 429, 435 (2006). The remaining three types of pleas are categorized as "negotiated pleas." A "fully" negotiated plea of guilty is one in which a defendant agrees to plead guilty in exchange for the State's dismissal of charges and a specific sentencing recommendation. *People v. Diaz*, 192 Ill. 2d 211, 219, 735 N.E.2d 605, 609 (2000). A second type of "negotiated" plea occurs "where a defendant enters a plea of guilty as a result of an agreement between defendant and the State solely as to charging." *Diaz*, 192 Ill. 2d at 220, 735 N.E.2d at 610. The third type of "negotiated" guilty plea occurs where a defendant pleads guilty in exchange for the State's agreement to dismiss other pending charges and make sentencing concessions; this is a partially negotiated plea. *Diaz*, 192 Ill. 2d at 221-22, 735 N.E.2d at 610.

¶ 16 A defendant may appeal an "open" plea after filing a motion to reconsider sentence in the trial court. *Scott*, 363 Ill. App. 3d at 890, 844 N.E.2d at 435. Conversely, when a plea is "fully" negotiated, a defendant must file a motion to withdraw plea and vacate the judgment before he may appeal. *Scott*, 363 Ill. App. 3d at 890-91, 844 N.E.2d at 435. The existence of a sentencing concession on the part of the State, such as the partially negotiated plea described by *Diaz*, triggers the motion-to-withdraw-plea requirement, and a defendant is not permitted to challenge his sentence without first withdrawing his guilty plea. *People v. Absher*, 242 Ill. 2d 77, 87, 950 N.E.2d 659, 666 (2011); *People v. Lumzy*, 191 Ill. 2d 182, 187, 730 N.E.2d 20, 23 (2000).

¶ 17 These distinctions related to plea agreements are set forth in Illinois Supreme

Court Rule 604(d), which provides, in pertinent part, 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 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. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 18 Here, defendant contends that "[t]he parties made no agreement as to the length of [his] sentence" and that "the only concessions made by the State involved pending charges and some assessments." The State responds that defendant's plea was partially negotiated because it made concessions regarding pending charges and the financial obligations resulting from defendant's plea. Specifically, the State asserts the parties reached an agreement to forgo the statutorily authorized \$500,000 fine and limit all other fines to the \$150 street-value fine.

¶ 19 In this case, the parties did not reach an agreement as to the length of defendant's prison sentence. Defendant, however, pleaded guilty in exchange for the State's promise to dismiss certain pending charges, as well as other sentencing concessions, rendering his plea partially negotiated. Thus, defendant's plea must be treated as a negotiated plea for purposes of Rule 604(d) because the State made sentencing concessions. Accordingly, pursuant to Rule 604(d), defendant's only remedy is to withdraw his guilty plea.

¶ 20 In his brief to this court, defendant seeks only to enforce the plea agreement he reached with the State. As we have previously explained, such a remedy is not available to defendant and, therefore, we reject his excessive-sentence claim.

¶ 21 B. Defendant's Claim That He Was Denied the
Benefit of His Guilty Plea Bargain

¶ 22 Defendant next contends the trial court violated his due process rights and denied him the "benefit of the bargain" by ordering him to pay fines not contemplated by the plea agreement. Defendant requests specific enforcement of the negotiated plea agreement as he understood it. Specifically, defendant asserts that he was denied due process when the court ordered defendant to pay a \$15 child advocacy center fee, a \$10 drug court fee, and a \$40 statutory surcharge, fines not contemplated by the plea agreement. The State responds that all three of these assessments are mandatory and cannot be vacated, and that trial court informed defendant that he would be ordered to pay unspecified mandatory fees.

¶ 23 Defendant's contention compels this court to determine whether certain mandatory fines become part of his plea by operation of law, which is reviewed *de novo*. *People v. Gutierrez*, 2012 IL 111590, ¶ 16, 962 N.E.2d 437, 441.

¶ 24 At the May 2010 plea hearing, the trial court stated that the only fine imposed was the \$150 street value fine, and referenced the fees as the drug treatment assessment, lab fee, and the drug trauma fund fine. This was in accord with the parties' written plea agreement, which provided: "\$150 street value fine, plus court costs and fees as authorized by law, payable as follows: \$3000 D[rug] T[reatment] A[ssessment] / \$100 I[llinois] S[tate] P[olice] LAB FEE/ \$100 D[rug] T[reatment] F[und] F[ine]." Nevertheless, the sentencing order specifically included, in pertinent part, a \$15 child advocacy center fee, a \$10 drug court fee, and a \$40 statutory surcharge. These are not fees but are mandatory fines. 55 ILCS 5/5-1101(f-5), (d-5) (West Supp. 2009) (child advocacy center, drug court fees); 730 ILCS 5/5-9-1(c) (West 2010) (statutory surcharge). See also *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E.2d 1128, 1133 (2010) (court may reimpose mandatory fees); *People v. Jamison*, 229 Ill. 2d 184, 190, 890 N.E.2d 929, 932 (2008) (section 5-9-1(c) fines).

¶ 25 Here, defendant claims that because he was not made aware of these mandatory fines, these fines should not be included as part of his sentence. In *People v. Ryburn*, 362 Ill. App. 3d 870, 841 N.E.2d 1013 (2005), *rev'd on other grounds*, 225 Ill. 2d 666-67, 873 N.E.2d 932 (2007), this court rejected Ryburn's argument that the trial court's imposition of statutorily mandated fines violated his plea agreement. There we stated, "by definition, because a fine is statutorily mandated, a trial court does not possess the authority to decline to impose it, even if the parties agreed that it not be imposed." *Ryburn*, 362 Ill. App. 3d at 875, 841 N.E.2d at 1017. Thus, in this case, (1) the State did not have authority to negotiate away these mandatory fines and (2) the trial court did not have the authority to decline to impose these fines, given that these mandatory fines became part of defendant's sentence by operation of law. Accordingly,

defendant's lack of knowledge related to the terms of his plea—a claim of which we are skeptical—is between defendant and his trial counsel. In that regard, we note that defendant does not claim that his counsel was ineffective for failing to inform him that mandatory fines would be included as consequences of his plea.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated herein, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 28 Affirmed.