

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120029-U

NO. 4-12-0029

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
August 28, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
JIMMIE D. LESTER,	)	No. 06CF1770
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Turner and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The appellate court affirmed a \$300 court-appointed counsel fee assessed against defendant pursuant to section 113-3.1(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-3.1(a) (West 2010)).

(2) The appellate court vacated four fines imposed by the circuit clerk but not ordered by the trial court and remanded with directions.

¶ 2 In June 2011, the trial court revoked defendant Jimmie D. Lester's probation for a March 2009 offense and, in November 2011, resentenced him to a 3 1/2-year prison term. At the conclusion of the November 2011 sentencing hearing, the court assessed a \$300 court-appointed counsel fee against defendant but otherwise ordered no fines or additional fees. However, the circuit clerk imposed fines against defendant totaling \$38.75. Defendant appeals, arguing (1) the court failed to hold a proper hearing on defendant's ability to pay the court-appointed counsel fee,

as required by section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2010)) and (2) the circuit clerk was without authority to impose fines against defendant.

¶ 3 We affirm in part as modified, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In November 2006, the State charged defendant with unlawful possession of a converted vehicle (625 ILCS 5/4-103(a)(1) (West 2006)) in Macon County case No. 06-CF-1770. Defendant was released on a bail bond, the terms of which he violated by leaving the state and failing to return for his court date.

¶ 6 In March 2009, following his apprehension, defendant pleaded guilty to violation of a bail bond (720 ILCS 5/32-10(a) (West 2008)) and the trial court sentenced him to 24 months of probation.

¶ 7 In November 2010, the State filed a petition to revoke defendant's probation based on his multiple violations of its terms. In January 2011, defendant admitted the violations. In March 2011, the trial court extended defendant's probation by 24 months, sentenced him to 120 days in the Macon County jail, and ordered him to comply with recommended drug treatment.

¶ 8 In June 2011, the State filed a second petition to revoke defendant's probation, alleging defendant failed to enter a residential treatment center.

¶ 9 In October 2011, following a hearing on the alleged violation, the trial court revoked defendant's probation.

¶ 10 In November 2011, the trial court resentenced defendant to 3 1/2 years' imprisonment. At the conclusion of the resentencing hearing, with defense counsel present, the following

exchange took place between the trial court and defendant:

"THE COURT: Sir, the Court is considering assessing a public defender fee in [the] amount of \$300.00. If that is assessed, that would be taken from the bond that you posted. That money doesn't go to [your public defender]. It goes to the County of Macon for providing the services of the Public Defender's Office. You do have the right to have a hearing. At the hearing, the Court would determine whether or not you would have the ability in the foreseeable future to pay that amount. Do you have any objection to that?

[DEFENDANT]: No.

THE COURT: Show public defender fee assessed in the amount of \$300.00. Bond previously posted ordered applied."

The court did not order defendant to pay any fines or additional fees beyond the \$300 court-appointed counsel fee. However, the circuit clerk imposed the following fines against defendant:

(1) a "Child Advocacy Fee" fine of \$14.25; (2) a "Youth Diversion Fee" fine of \$5; (3) a "Medical Costs" fine of \$10; and (4) a "Nonstandard" fine of \$9.50.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant asserts (1) the trial court assessed the court-appointed counsel fee without adequately complying with the requirements of section 113-3.1(a) of the Code (725 ILCS 5/113-3.1(a) (West 2010)) and (2) the "fees" assessed by the circuit clerk were in fact fines

and the circuit clerk was without authority to assess fines against defendant.

¶ 14 In response, the State argues defendant waived the hearing on imposition of the court-appointed counsel fee. The State does not contest defendant's claim that the circuit clerk was without authority to impose the fines.

¶ 15 For the reasons that follow, we (1) vacate all fines and fees except the court-appointed counsel fee, (2) affirm the trial court's assessment of a court-appointed counsel fee under section 113-3.1(a) of the Code, and (3) remand for the trial court to order imposition of the "Youth Diversion Fee" and "Medical Costs" fines.

¶ 16 A. The Notice and Hearing Requirements of Section 113-3.1(a)

¶ 17 Section 113-3.1(a) of the Code provides as follows:

"Whenever under either Section 113-3 of this Code or Rule 607 of the Illinois Supreme Court the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at



¶ 20 The State further contends, however, the exchange between the trial court and defendant at the sentencing hearing demonstrates defendant affirmatively waived his right to a section 113-3.1(a) hearing. The specific point of disagreement between the State and defendant is whether the court, when it asked defendant, "Do you have any objection to that?," was asking defendant whether he had an objection to the hearing or whether he had an objection to imposition of the \$300 court-appointed counsel fee.

¶ 21 Given the context of his statement, we conclude defendant was voicing his lack of objection to the court's assessment of a court-appointed counsel fee in the amount of \$300. Therefore, if defendant was adequately admonished of his right to a hearing, the above colloquy suggests he waived his right to a hearing.

¶ 22 According to our supreme court, the section 113-3.1 hearing is a safeguard designed to insure that a court's order assessing a court-appointed counsel reimbursement fee meets constitutional due process standards. *Love*, 177 Ill. 2d at 564, 687 N.E.2d at 39. The statutorily required hearing need only (1) provide the defendant with notice that the court is considering imposing a payment order, pursuant to section 113-3.1, and (2) give the defendant an opportunity to present evidence regarding his ability to pay and other relevant circumstances, and otherwise to be heard regarding whether the court should impose such an order. *People v. Roberson*, 335 Ill. App. 3d 798, 803-04, 780 N.E.2d 1144, 1148 (2002).

¶ 23 Here, we find the trial court sufficiently notified defendant of his right to a hearing. We note that the supreme court in *Somers*, 2013 IL 114054, ¶14, 984 N.E.2d 471, addressed the issue of notice, stating "the court must give the defendant notice that it is considering imposing the fee, and the defendant must be given the opportunity to present evidence

regarding his or her ability to pay and any other relevant circumstances." In this case, defendant was notified that the court was considering imposing the fee and that he had the right to a hearing at which the court would determine his ability to pay. According to *Somers*, this was sufficient notice.

¶ 24 Given that we find defendant was sufficiently notified of his right to a hearing pursuant to section 113-3.1(a), and that he knowingly acquiesced to a court-appointed counsel fee, defendant waived his right to hearing. See *People v. Dunlap*, 2013 IL App (4th) 110892.

¶ 25 Accordingly, we affirm the trial court's assessment of the \$300 court-appointed counsel fee.

¶ 26 C. Fines Improperly Imposed by the Circuit Clerk

¶ 27 Defendant asserts the circuit clerk improperly imposed the following fines against him: (1) "Child Advocacy Fee"—\$14.25; (2) "Youth Diversion Fee"—\$5; (3) "Medical Costs"—\$10; and (4) "Nonstandard"—\$9.50. Defendant cites this court's decision in *People v. O'Laughlin*, 2012 IL App (4th) 110018, 979 N.E.2d 1023, in support of his position. We find *O'Laughlin* (a case also involving fines imposed by the Macon County circuit clerk) directly applicable to the facts of this case. Pursuant to *O'Laughlin*, 2012 IL App (4th) 110018, ¶ 12, 979 N.E.2d 1023, defendant concedes the "Youth Diversion Fee" and "Medical Costs" fines are "applicable and mandatory in nature and should be imposed by the trial court on remand." As to the "Child Advocacy Fee" and "Nonstandard" fines, however, defendant contends they must be vacated outright. The State concedes defendant's argument as to the circuit clerk's imposition of these fines. We accept the State's concession and vacate the fines. Pursuant to *O'Laughlin*, we remand to the trial court for imposition of the "Youth Diversion Fee" and "Medical Costs" fines.

¶ 28

### III. CONCLUSION

¶ 29 We affirm the \$300 court-appointed counsel fee and vacate (1) the \$14.25 "Child Advocacy Fee" fine, (2) the \$5 "Youth Diversion Fee" fine, (3) the \$10 "Medical Costs" fine, and (4) the \$9.50 "Nonstandard" fine. We remand the case for imposition of the "Youth Diversion Fee" and "Medical Costs" fines. We otherwise affirm as modified. As part of our judgment, because the State successfully defended a portion of this appeal, we award it its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2010).

¶ 30 Affirmed in part as modified and vacated in part; cause remanded with directions.