

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) 120346-U  
NO. 4-12-0346  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
June 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  
ROBERT A. REGGUINTI, ) No. 11CF281  
Defendant-Appellant. )  
) Honorable  
) Timothy J. Steadman,  
) Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's proportionate penalties clause argument failed because, despite defendant's arguments to the contrary, it was an improper cross-comparison argument.
- ¶ 2 Defendant was entitled to vacatur of a \$10 "Anti-Crime Fund" fine because the trial court did not impose the fine and the fine was not applicable to defendant, who was sentenced to prison.
- ¶ 3 In October 2011, pursuant to an open plea agreement, defendant, Robert A. Regguinti, pleaded guilty to one count of indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2010) (text of section effective until July 1, 2011)). In December 2011, the Macon County circuit court sentenced defendant to 13 years' imprisonment with a mandatory supervised release (MSR) term of natural life. Defendant filed a motion to reconsider his sentence and an amended motion to reconsider, challenging both the length of his prison term and MSR. After a March

2012 hearing, the court changed the MSR term to an indeterminate one of between three years to natural life but denied defendant's motion to reconsider in all other respects.

¶ 4 Defendant appeals, asserting (1) his sentence violates the proportionate penalties clause and (2) he should not have been assessed a \$10 "Anti-Crime Fund" fine. We affirm in part, vacate in part, and remand the cause with directions.

¶ 5 I. BACKGROUND

¶ 6 In March 2011, the State charged defendant by information with one count of indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2010) (text of section effective until July 1, 2011)), two counts of approaching, contacting, residing, or communicating with a child within certain places by child sex offenders prohibited (720 ILCS 5/11-9.4(b-7) (West 2010)) for his actions in late February and early March 2011. The parties entered into a plea agreement, under which defendant would plead guilty to one count of indecent solicitation of a child, and the State would move to dismiss the other two charges. At an October 17, 2011, hearing, the trial court accepted the guilty plea to indecent solicitation of a child and dismissed the other two charges.

¶ 7 On December 5, 2011, the trial court held a sentencing hearing. The State presented the testimony of Crete police officer Robert Hill, who investigated defendant's prior indecent-solicitation-of-a-child conviction; Decatur police officers Brad Allen and Ronald Borowczyk, who investigated this case; and David Pruitt, a Decatur detective and father of the victim in one of the dismissed charges (no objection to his reading of his family's victim impact statements). Officer Allen testified that, in February 2011, defendant sent text messages to a 12-year-old girl. In the messages, he sought her name, age, and what school she attended. The girl

told her parents, who took the girl's cellular telephone (cell phone) to the Decatur police department. Officer Allen assumed the identity of the 12-year-old girl and had a text conversation with defendant for several hours on February 28, 2011. Defendant requested something to prove the "girl" was not out to get him in trouble. He wanted pictures and a voice-mail message. Additionally, defendant started inquiring about how many guys the "girl" had been with and what was the age of the oldest male she had been with. He further questioned the "girl's" whereabouts and what she was wearing. Defendant also stated he slept naked and would touch himself after the conversation ended.

¶ 8 On March 1, 2011, Officer Allen had a female detective leave a voice-mail message on defendant's cell phone and sent an undercover photograph of a 14-year-old girl to defendant's cell phone. Defendant started a text conversation and began by stating he liked the things he had received. He also explained to the "girl" how they could meet without anyone knowing about it. Defendant then sent four pictures, three of which were of a penis and one was a man's chest and stomach area. After the pictures, his language became vulgar, and he referred to his penis as his cock. Defendant stated he would make sure it did not hurt when he put his penis in "the girl." Defendant continually requested naked pictures of the "girl."

¶ 9 The next day, the police arrested defendant. After defendant's arrest, Detective Allen interviewed him. Defendant admitted sending out texts to random numbers to see if anybody would respond. He also admitted sending the four pictures of himself and that he had stated he would crawl in through the victim's window. When asked if he would have had sex with the girl on the date he sent the photographs, defendant said "he probably would of had sex with her." Defendant also stated he had communicated with other minors but believed they were

16 or 17.

¶ 10 Defendant presented the testimony of his pastor, David Catron, and his friend, Tammy Walker. Defendant also made a statement in allocution. All three expressed defendant's remorse and desire to get help.

¶ 11 After hearing all of the evidence and the parties' arguments, the trial court sentenced defendant to 13 years' imprisonment, MSR of natural life, and a \$500 statutory fine. The court entered a written sentencing judgment that did not address any financial obligations and a supplemental order. The supplemental order required defendant to pay (1) a \$500 sex offender fine under section 5-9-1.15(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-9-1.15(a) (West 2010)), (2) court costs, and (3) \$550 to reimburse the county for the cost of defendant's sex-offender evaluation.

¶ 12 On December 21, 2011, defendant filed a motion to reconsider his sentence, asserting his sentence was excessive based on the facts of the case. In February 2012, defendant filed an amended motion to reconsider his sentence, asserting the trial court improperly imposed an MSR term of natural life and again arguing his sentence was excessive. Defense counsel filed the certificate required by Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). After a March 16, 2012, hearing, the court changed the MSR term to three years to natural life to be determined by the Department of Corrections but denied the postplea motion in all other respects. The court also entered an amended sentencing judgment that reflected the MSR change.

¶ 13 On April 9, 2012, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). Thus, this court has jurisdiction under Rule 604(d).

¶ 14

## II. ANALYSIS

¶ 15

### A. Proportionate Penalties Clause

¶ 16 Defendant first asserts his 13-year prison term violates the proportionate penalties clause because his act of speaking to an adult pretending to be a child was punished more harshly than it would have been if he had actually committed a sexual act with a child. The State disagrees and notes our supreme court has abolished the cross-comparison test for determining a violation of the proportionate penalties clause. See *People v. Sharpe*, 216 Ill. 2d 481, 519, 839 N.E.2d 492, 515-16 (2005).

¶ 17 While defendant failed to raise his proportionate-penalties issue in his Rule 604(d) motion, he has not forfeited the contention. A sentence that violates the proportionate penalties clause is void *ab initio* (*People v. Guevara*, 216 Ill. 2d 533, 542, 837 N.E.2d 901, 906 (2005)), and a claim that a judgment is void is not subject to forfeiture and can be raised at any time (*People v. Thompson*, 209 Ill. 2d 19, 27, 805 N.E.2d 1200, 1205 (2004)). Accordingly, defendant's claim is properly before us.

¶ 18 As the State argues, a defendant can "no longer challenge a penalty under the proportionate penalties clause by comparing it with the penalty for an offense with different elements." *Sharpe*, 216 Ill. 2d at 521, 839 N.E.2d at 517. A defendant may argue (1) a penalty is too severe, which is judged under the "'cruel or degrading'" standard or (2) a penalty is harsher than the penalty for a different offense that contains identical elements. *Sharpe*, 216 Ill. 2d at 521, 839 N.E.2d at 517. Defendant asserts his sentence violates the proportionate penalties clause because it was impermissibly harsh under the facts of his case. Thus, defendant must show his penalty is "cruel, degrading, or so wholly disproportionate to the offense that it shocks

the moral sense of the community." *People v. Klepper*, 234 Ill. 2d 337, 348, 917 N.E.2d 381, 386 (2009). Our supreme court has never defined what kind of punishment meets the aforementioned standard "because, as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." *People v. Miller*, 202 Ill. 2d 328, 339, 781 N.E.2d 300, 307-08 (2002). Thus, Illinois courts "review the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence within our community's evolving standard of decency." *Miller*, 202 Ill. 2d at 340, 781 N.E.2d at 308.

¶ 19 While defendant claims he is challenging his sentence on the basis it is cruel, degrading, and wholly disproportionate to his offense, his argument focuses on different sentencing ranges for different sex crimes with children. Defendant asserts it is not a cross-comparison challenge because he is comparing his sentence for the inchoate offense with the sentencing range for the choate offense to show his sentence is wholly disproportionate to his offense. Specifically, defendant claims his 13-year sentence for a Class 1 felony (720 ILCS 5/11-6(c)(1) (West 2010) (text of section effective until July 1, 2011)) is double what he would have been subject to if he had sex with the 13-year-old victim. However, defendant's solicitation charge was based on his text conversations with a police officer pretending to be a 12-year-old girl. Additionally, the actual victim of one of the dismissed charges was 12 years old at the time of the crime, not 13 as alleged by defendant. Moreover, if defendant would have had sex with a 12-year-old girl, he would have been guilty of predatory criminal sexual assault of a child, a Class X felony with a prison term of not less than 6 years and not more than 60 years. See 720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2010) (text of section effective until July 1, 2011). Thus, defendant's 13-year sentence is on the lower end of that sentencing range, not twice as long as he

claims. As shown above with predatory criminal sexual assault of a child being a Class X felony while solicitation of the same act is a Class 1 felony, the legislature drafted the penalties of the indecent-solicitation-of-a-child statute to be a class lower than the offense the defendant would have committed if the acts the defendant proposed were, in fact, committed. Compare 720 ILCS 5/11-6(c)(2), (c)(3) (West 2010) (text of section effective until July 1, 2011) with 720 ILCS 5/12-13(b)(1), 12-16(g) (West 2010) (text of section effective until July 1, 2011). Thus, contrary to defendant's assertion, a defendant who commits the sexual act faces a sentencing range with longer prison terms than one who just solicits the same act.

¶ 20 In his briefs, defendant essentially compares the penalties for him committing sexual penetration of a 13-year-old, which constitutes the Class 2 felony of aggravated criminal sexual abuse (720 ILCS 5/12-16(d), (g) (West 2010) (text of section effective until July 1, 2011)) to his soliciting sexual penetration with a 12-year-old, which is the Class 1 felony of indecent solicitation of a child (720 ILCS 5/11-6(a), (c)(1) (West 2010) (text of section effective until July 1, 2011)). Defendant's argument highlights why the supreme court did away with the cross-comparison test, as we do not know what factors the legislature took into account in treating sexual penetration with a 12-year-old different from a 13-year-old, and treating solicitation of a 12-year-old different from a 13-year-old, and thus ultimately why soliciting sexual penetration with a 12-year-old has a greater penalty than sexual penetration with a 13-year-old. See *Sharpe*, 216 Ill. 2d at 518-19, 839 N.E.2d at 515. We find defendant's argument is an improper cross-comparison challenge.

¶ 21 Accordingly, defendant has failed to show his 13-year sentence violates the proportionate penalties clause.

¶ 22

B. "Anti-Crime Fund" Fine

¶ 23 Last, defendant challenges the imposition of the \$10 "Anti-Crime Fund" fine, noting the trial court did not impose that fine and the fine is not applicable to him since he was not placed on probation. See *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003) (holding the imposition of a fine is a judicial act); *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 16, 979 N.E.2d 1023 (noting the "\$10 'Anti-Crime Fund' fine" does not apply to defendants sentenced to prison). Defendant also failed to raise this issue in his Rule 604(d) motion. However, like defendant's first argument, he claims the \$10 "Anti-Crime Fund" fine is void, and thus the claim can be raised at any time and is not subject to forfeiture. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437. Thus, this issue is also properly before us. The State concedes the fine was improperly imposed.

¶ 24 After reviewing the matter, we accept the State's concession, vacate the \$10 "Anti-Crime Fund" fine, and remand the cause to the trial court for it to remove the fine from the court's record of defendant's financial obligations in this case. Moreover, the record shows the only fine imposed by the trial court was a \$500 fine under section 5-9-1.15(a) of the Unified Code (730 ILCS 5/5-9-1.15(a) (West 2010)). Thus, on remand, the trial court should also enter a second supplemental order imposing the other mandatory fines and fees applicable to defendant's case and to ensure the circuit clerk's record of defendant's financial obligations in this case is consistent with the trial court's orders. We note the fine matter is best handled by the trial court because some fines are approved by county boards, some fines are calculated based on the total amount of other fines, and the computer printout of defendant's financial obligations in this case may contain data-entry errors.

¶ 25

### III. CONCLUSION

¶ 26 For the reasons stated, we vacate the \$10 "Anti-Crime Fund" fine, affirm the judgment in all other respects, and remand the cause to the McLean County circuit court to comply with the directions stated in this order. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed in part and vacated in part; cause remanded with directions.