

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).

2014 IL App (3d) 120634-U

Order filed January 29, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellee,) Peoria County, Illinois,
)
v.) Appeal No. 3-12-0634
) Circuit No. 08-CF-1191
ROY T. YOUNG, JR.,)
) Honorable
Defendant-Appellant.) James E. Shadid and Stephen A. Kouri,
) Judges, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's public defender fee was entered without a hearing or order and is vacated.

¶ 2 Defendant, Roy T. Young, Jr., appeals the summary dismissal of his *pro se* postconviction petition. On appeal, defendant argues that his public defender fee was improperly imposed by the circuit clerk and asks this court to vacate the fee. We affirm in part and vacate in part.

¶ 3 **FACTS**

¶ 4 After a jury trial, defendant was found guilty of residential burglary (720 ILCS 5/19-3(a) (West 2008)); unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1 (West 2008)); and unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1 (West 2008)). The trial court sentenced the defendant to a total of 14 years' imprisonment. The trial court's written sentencing order included a judgment for \$1,319 in costs. The costs were not itemized in the court's order. A \$100 public defender fee was noted on defendant's costs sheet that was apparently generated by the circuit clerk's office. The record does not indicate that a hearing was ever held on the fee.

¶ 5 On May 7, 2012, defendant filed a *pro se* postconviction petition. In the petition, the defendant generally alleged that his constitutional rights were violated at trial. The trial court summarily dismissed the petition. Defendant appeals.

¶ 6 ANALYSIS

¶ 7 On appeal, defendant asks this court to vacate his \$100 public defender fee because it was imposed without a hearing or order of the trial court.

¶ 8 Initially, we note that defendant raises this issue for the first time on appeal of the dismissal of his *pro se* postconviction petition. Nevertheless, we review the imposition of the fee to determine if it was entered without authority and was therefore void and subject to vacatur. *People v. Gutierrez*, 2012 IL 111590.

¶ 9 Section 113-3.1 of the Code of Criminal Procedure of 1963 permits a court to order a defendant to pay a fee for the service of a public defender. 725 ILCS 5/113-3.1(a) (West 2008). Before the fee may be imposed, a hearing must be conducted on either the court's own motion or on the motion of the State. *Id.* The hearing may be held any time after the appointment of counsel, but

no later than 90 days after the entry of a final order disposing of the case. *Id.*

¶ 10 In *Gutierrez*, the circuit clerk imposed a public defender fee without an order of the trial court. On review, our supreme court vacated the fee. The court noted that there was no indication in the record that the trial court considered imposing the public defender fee and neither the court nor the State sought the fee. The court found that the appellate court should have vacated the fee outright. In its ruling, the court noted that the appellate court had jurisdiction to act on void orders. In a footnote, the court stated that it is more efficient for the appellate court to resolve the clerk's illegal action while the case is on review and prevent further burden to the defendant. *Gutierrez*, 2012 IL 111590.

¶ 11 Here, there was no motion for public defender fees, nor was there a hearing on defendant's ability to pay. The fee only appeared on defendant's cost sheet. From this record, it appears that the circuit clerk imposed the fee without authority and an order of the court. Since it is void, we must vacate the public defender fee. *Gutierrez*, 2012 IL 111590.

¶ 12 CONCLUSION

¶ 13 The judgment of the circuit court of Peoria County is affirmed in part and vacated in part.

¶ 14 Affirmed in part and vacated in part.