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2014 IL App (3d) 120652-U

Order filed August 7, 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, Tazewell County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-0652
ALBERT E. THORNTON,)	Circuit No. 08-CF-664
Defendant-Appellant.)	Honorable Scott A. Shore, Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* Fines imposed by the circuit clerk are vacated as being void.
- ¶ 2 Defendant, Albert E. Thornton, pled guilty to aggravated discharge of a firearm. 720 ILCS 5/24-1.2(a)(1) (West 2008). He was sentenced to eight years of imprisonment and assessed a \$200 deoxyribonucleic acid (DNA) analysis fee. On direct appeal, pursuant to *Anders v. California*, 386 U.S. 738 (1967), this court allowed defendant's appellate counsel to withdraw because there were no arguable errors to be considered on appeal. *People v. Thornton*, No. 3-12-

0202 (2013) (unpublished order under Supreme Court Rule 23). Defendant filed a postconviction petition, in response to which the State filed a motion to dismiss. The circuit court granted the State's motion to dismiss the postconviction petition. Defendant appealed.

¶ 3

FACTS

¶ 4

Defendant was charged with aggravated discharge of a firearm, a Class 1 felony. Defendant entered a blind guilty plea. His attorney indicated to the court that he had advised defendant that the court would "make the sole decision as to sentencing, and that could range anywhere from probation to 4 to 15 years in the Department of Corrections (DOC)." The court admonished defendant that he could receive probation not to exceed 48 months, a fine of up to \$25,000, and a sentence in the DOC for 4 to 15 years followed by 2 years of mandatory supervised release (MSR).

¶ 5

After the State presented the factual basis for the plea, the circuit court found that defendant entered his guilty plea voluntarily and accepted his plea of guilty. The circuit court sentenced defendant to eight years of imprisonment followed by two years of MSR. The circuit court also gave defendant credit for 220 days spent in custody prior to sentencing and ordered him to submit a DNA sample and pay a \$200 DNA analysis fee. A printout from the circuit clerk indicates that defendant was assessed fines, fees, and costs, including a: (1) \$50 "Court" fee; (2) \$20 "Violent Crime" fee; and (3) \$10 "Child Advocacy" fee.

¶ 6

Defendant filed a motion to reconsider and reduce sentence, which the trial court denied. Defendant appealed. On appeal, this court allowed defendant's appellate counsel to withdraw from representing defendant on appeal pursuant to *Anders*, 386 U.S. 738.

¶ 7 Defendant filed a *pro se* postconviction petition, which his appointed counsel amended. In response to the amended petition, the State filed a motion to dismiss. The circuit court granted the State's motion to dismiss. Defendant appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that, other than the \$200 DNA analysis fee, additional fines assessed against him were either subject to be offset by a \$5 *per diem* credit for each day he spent in presentence custody or were incorrectly imposed. We review the propriety of fines, fees, and costs imposed by the trial court *de novo* as a question of statutory interpretation. *People v. Hunter*, 2014 IL App (3d) 120552.

¶ 10 Pursuant to section 110-14 of the Code of Criminal Procedure of 1963, any person who is incarcerated on a bailable offense and does not post bail is entitled to a credit of \$5 for each day spent in presentence custody against his fines, not to exceed the amount of the fines. 725 ILCS 5/110-14 (West 2008). In this case, defendant spent 220 days in presentence custody, giving him a potential monetary credit of up to \$1,100 against his fines.

¶ 11 Defendant contends that the credit is applicable against the imposed \$50 "Court" fee because it is a fine. See 55 ILCS 5/5-1101(c) (West 2008) (county board may set a fine of \$50 for felony offenses to finance the court system); *People v. Graves*, 235 Ill. 2d 244 (2009) (the court fee authorized pursuant to section 5-1101 of the Counties Code is a fine). He also contends that the credit is applicable against the \$10 "Child Advocacy" fee because that too is a fine. See *People v. Jones*, 397 Ill. App. 3d 651 (2009) (finding the Children's Advocacy Center fee to be a fine). He additionally argues that the \$20 violent crime fee pursuant to section 10(c) of the Violent Crime Victims Assistance Fund Act was erroneously imposed. See 725 ILCS 240/10(c) (West 2008).

¶ 12 In response, the State indicates that other than the DNA analysis assessment, the fines at issue are void because they were improperly imposed by the circuit clerk rather than the circuit court judge. See *People v. Alghadi*, 2011 IL App (4th) 100012 (any fine imposed by the circuit clerk is void because the imposition of any fine is a judicial act over which the clerk has no authority). A void order may be challenged at any time. *People v. Thompson*, 209 Ill. 2d 19 (2004). We accept the State's position and conclude that the fines at issue are void.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, we vacate the \$50 court fee, \$20 violent crime fee, and \$10 child advocacy fee assessed by the circuit clerk.

¶ 15 Affirmed in part and vacated in part.