

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 (4th) 130442-U

NO. 4-13-0442

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 5, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
McSARTUSE HARRIS,)	No. 10CF1351
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) vacated defendant's sentence based on improper admonishments and reduced his sentence to three years in prison; (2) vacated fines imposed by the circuit clerk; and (3) remanded with directions for the trial court to impose all mandatory fines.

¶ 2 In December 2010, defendant, McSartuse Harris, pleaded guilty to one count of aggravated driving while under the influence of cannabis. In February 2011, the trial court sentenced him to 24 months' probation. In December 2012, the State filed a petition to revoke probation. In January 2013, the court revoked defendant's probation. In April 2013, the court sentenced him to 4 1/2 years in prison.

¶ 3 On appeal, defendant argues the trial court erred in sentencing him to 4 1/2 years in prison following the revocation of his probation. We affirm in part as modified, vacate in part, and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In August 2010, the State charged defendant by information with single counts of aggravated driving under the influence of alcohol (count I) (625 ILCS 5/11-501(a)(2), (d)(1)(G) (West 2010)) and driving while his license was revoked (count II) (625 ILCS 5/6-303(a) (West 2010)). At the arraignment hearing, the trial court admonished defendant that the charges were Class 4 felonies, carrying possible prison terms of one to three years in prison. In December 2010, the State charged defendant with aggravated driving under the influence of drugs (count III) (625 ILCS 5/11-501(a)(6), (d)(1)(H) (West 2010)).

¶ 6 In December 2010, the trial court conducted a plea hearing. The court admonished defendant as to count III, stating it was a Class 4 felony for which he could spend one to three years in prison. Defendant entered a negotiated plea of guilty to count III. In exchange for the plea, the State dismissed counts I and II and agreed to 24 months' probation, conditioned upon evaluations, treatments, and community service. Defendant would also be required to pay certain fines, fees, and costs. The court accepted defendant's plea.

¶ 7 In February 2011, the trial court sentenced defendant to 24 months' probation and imposed various rules and conditions. The court also ordered him to pay various fines and fees.

¶ 8 In December 2012, the State filed a petition to revoke defendant's probation. The State alleged he failed to complete recommended treatment and failed to pay court costs and the probation fees.

¶ 9 In January 2013, the trial court conducted the arraignment hearing on the petition to revoke probation and admonished defendant that the Class 4 felony of count III carried a prison term of one to three years in prison. Following a hearing on the petition, the court revoked defendant's probation.

¶ 10 In February 2013, defendant filed a motion to reconsider, arguing the State failed to prove the allegations in the petition. In April 2013, the trial court denied the motion. Thereafter, the court sentenced defendant to 4 1/2 years in prison.

¶ 11 In April 2013, defendant filed a motion to reconsider sentence, arguing the trial court gave too much weight to the factors in aggravation and too little weight to the factors in mitigation. He also argued the sentence was excessive. In May 2013, the court denied the motion to reconsider. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Sentence Upon Probation Revocation

¶ 14 On appeal, defendant argues the 4 1/2-year sentence imposed by the trial court following the revocation of his probation must be reduced to 3 years, the maximum term he was told he could receive when he pleaded guilty.

¶ 15 Initially, we note the State argues defendant has forfeited his claim on appeal by failing to include the alleged sentencing error in his motion to reconsider sentence. See *People v. Rathbone*, 345 Ill. App. 3d 305, 309-10, 802 N.E.2d 333, 337 (2003). Although conceding his failure to raise the issue in the trial court, defendant argues the matter should be reviewed as plain error or as ineffective assistance of counsel.

¶ 16 The plain-error doctrine permits a reviewing court to consider unpreserved error when:

"(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) a clear or obvious error occurred and that error is so

serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Raney*, 2014 IL App (4th) 130551, ¶ 41, 8 N.E.3d 633.

¶ 17 Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *People v. Lewis*, 234 Ill. 2d 32, 43, 912 N.E.2d 1220, 1227 (2009). As the first step in the analysis, we must determine whether any error occurred at all. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010).

¶ 18 The Unified Code of Corrections provides the sentencing range for a Class 4 felony is one to three years in prison. 730 ILCS 5/5-4.5-45(a) (West 2010). An extended term for a Class 4 felony has a range of three to six years in prison. 730 ILCS 5/5-4.5-45(a) (West 2010). "If the conviction was by plea, it shall appear on the record that the plea was entered with the defendant's knowledge that a sentence under this Section was a possibility." 730 ILCS 5/5-8-2(b) (West 2010).

¶ 19 In the case *sub judice*, the trial court admonished defendant at the plea hearing that the maximum penalty he faced for the Class 4 felony of aggravated driving under the influence of drugs was three years in prison. The court did not admonish defendant as to the possibility of extended-term sentencing. At the arraignment on the petition to revoke probation, the court admonished defendant that he faced one to three years in prison but made no mention of an extended term. At sentencing, the court sentenced defendant to 4 1/2 years in prison, and the order indicated defendant was "extended term eligible."

¶ 20 As the State concedes, the trial court erred in sentencing defendant to 4 1/2 years in prison given the admonishments only noted a maximum term of 3 years. The question then

centers on the relief available to defendant.

¶ 21 "When no direct appeal is taken from an order of probation and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of that probation, unless the underlying judgment of conviction is void." *People v. Johnson*, 327 Ill. App. 3d 252, 256, 762 N.E.2d 1180, 1183 (2002). This court has noted "improper admonishments do not themselves render a defendant's conviction void." *People v. Gregory*, 379 Ill. App. 3d 414, 421, 883 N.E.2d 762, 768 (2008). "Thus, when just the admonishment was improper, the only available remedy to address the error is a sentence in accordance with the improper admonishment." *Gregory*, 379 Ill. App. 3d at 422, 883 N.E.2d at 769; see also *People v. Taylor*, 368 Ill. App. 3d 703, 708, 859 N.E.2d 20, 25 (2006).

¶ 22 The record does not demonstrate that defendant knew of the possibility of an extended-term sentence when he entered his guilty plea. Accordingly, we vacate defendant's extended-term sentence of 4 1/2 years in prison. Under the circumstances, we need not remand the cause to the trial court for resentencing, since the record establishes the court's intent to impose a sentence beyond the maximum nonextended term. Thus, under Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967), we reduce defendant's sentence on count III to the maximum nonextended term of three years in prison.

¶ 23 B. Fines and Fees

¶ 24 In its brief, the State argues the trial court failed to impose statutory mandated fines and fees and the circuit clerk improperly assessed certain fines and fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959 (stating the imposition of a fine is a judicial act and since "the circuit clerk has no authority to levy fines, any fines imposed by the

circuit clerk are void from their inception"). In his reply brief, defendant contends we should decline to address the issue because the State could not raise it on the appeal of a criminal defendant or in a cross-appeal. However, because the State's voidness argument is not barred by the limits on the State's right to appeal and this court has an independent duty to vacate void orders, we will address the State's argument. *People v. Warren*, 2014 IL App (4th) 120721, ¶ 152, 16 N.E.3d 13.

¶ 25 "[W]hen a court revokes a defendant's probation, a new sentence is imposed." *People v. Felton*, 385 Ill. App. 3d 802, 804, 896 N.E.2d 910, 913 (2008). In the April 2013 judgment order, the trial court sentenced defendant to 4 1/2 years in prison. The court did not impose any fines or fees and did not reimpose the fines and fees imposed under the prior probation order. The record, however, shows outstanding fines and fees remain. We need not engage in a lengthy analysis of the impropriety of the circuit clerk imposing judicial fines, as our prior cases have addressed the issue. See *Warren*, 2014 IL App (4th) 120721, ¶¶ 75-171, 16 N.E.3d 13; *Larue*, 2014 IL App (4th) 120595, ¶¶ 54-73, 10 N.E.3d 959; *People v. Montag*, 2014 IL App (4th) 120993, ¶¶ 33-40, 5 N.E.3d 246; *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 24-39, 13 N.E.3d 1280. Instead, we vacate the fines imposed by the circuit clerk and remand for the trial court to impose the proper fines. We direct the appellate prosecutor to provide copies of its brief on appeal to the trial court and the circuit clerk on record. We direct our clerk to provide an extra copy of our disposition directly to the attention of the circuit clerk.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we vacate the extended-term portion of defendant's sentence and reduce his sentence to the maximum nonextended term of three years in prison. We also vacate the circuit clerk's imposition of fines and remand with directions for the trial

court to impose all mandatory fines effective at the time of the offense (July 10, 2010). As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

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