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2015 IL App (3d) 121060-U

Order filed February 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-1060
SHAWN D. PEDIGO,)	Circuit Nos. 11-CF-178 and 11-CF-222
Defendant-Appellant.)	Honorable Scott Shipplett, Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* Cause is remanded for proper judicial entry of written order enumerating financial charges assessed against defendant.
- ¶ 2 Defendant, Shawn D. Pedigo, was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)) and aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2004)). The trial court sentenced defendant to consecutive terms of imprisonment of 22 years and 4 years, respectively. The court also ordered defendant to pay court costs. That order represented the extent of the court's involvement in the calculation or

imposition of defendant's assessments. Defendant argues that his assessments were improperly calculated and imposed by the clerk; he also takes exception to certain specific assessments. We remand the matter so the trial court may calculate defendant's total costs.

¶ 3

FACTS

¶ 4

On May 23, 2011, defendant was charged by indictment with predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)) in case No. 11-CF-178. The indictment alleged that defendant committed the offense from on or about August 31, 1999, to April 27, 2011. Defendant was also charged in a separate indictment with aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2004)) in case No. 11-CF-222. That indictment alleged defendant committed the offense from on or about January 1, 2004, to December 31, 2005.

¶ 5

Following a stipulated bench trial, the trial court found defendant guilty on both charges. On June 1, 2012, the court sentenced defendant to consecutive terms of imprisonment of 30 years and 5 years in case Nos. 11-CF-178 and 11-CF-222, respectively. The court also ordered that defendant pay "court costs only," reasoning that other fines or costs would be "pointless," as there would be no money available to pay.

¶ 6

On November 30, 2012, the court granted defendant's motion to reconsider the sentence, and reduced the sentences to consecutive terms of 22 years and 4 years' imprisonment. Two new sentencing orders—one in each case—were issued reflecting the new sentences. Each sentencing order imposed "court costs," but does not enumerate those costs. The sentencing order in case No. 11-CF-178 granted defendant 402 days of presentence incarceration credit.

¶ 7

The cost sheet in case No. 11-CF-178 is file stamped December 24, 2012; the cost sheet in case No. 11-CF-222 is file stamped April 30, 2014. Both sets of cost sheets include

assessments totaling \$255, and both refer back to orders of June 1, 2012, the original date of sentencing. Neither cost sheet bears the signature of the trial judge. Defendant contends that these costs sheets demonstrate that his assessments were improperly imposed by the clerk, rather than by the trial court.

¶ 8

ANALYSIS

¶ 9

It is well-settled that the imposition of fines is a judicial act; the imposition of fines by a clerk constitutes an improper delegation of judicial power. *People v. Warren*, 2014 IL App (4th) 120721 (collecting cases). It has been the position of this court that "[a]ny miscalculations with regard to monetary charges are best addressed in the trial court, with both parties present." *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 17.

¶ 10

Here the trial court's only reference to defendant's assessments was that he pay "court costs." As in *Hunter*, the trial court never entered a written judgment order enumerating a sum certain. *Id.* The calculation of defendant's assessments was apparently completed by the clerk, and reflected in cost sheets that do not bear a judicial signature. Further, because each cost sheet was issued well after the parties' final appearance before the court, "neither defendant nor the State had an opportunity to raise any issue with respect to costs as calculated by the circuit clerk." *Id.* ¶ 16.

¶ 11

Certain complexities in the present case further illustrate the need for judicial calculation and entry of fines and fees. As defendant points out, the indictments upon which he was convicted allege conduct spanning a significant length of time. This gives rise to *ex post facto* concerns in the context of defendant's fines. See *People v. Prince*, 371 Ill. App. 3d 878 (2007) (punitive assessments are subject to *ex post facto* principles). Certain of defendant's assessments, such as the teen court fee (authorized by Public Act 93-892, § 5, eff. Jan. 1, 2005) and the drug

court fee (authorized by Public Act 94-980, § 5, eff. June 30, 2006), were authorized by acts that became effective within the time span of defendant's conduct as alleged in the indictments. Defendant also points out that he may be entitled to the statutory credit of \$5 per diem, which was only repealed for certain sex offenses in 2005 (see Public Act 93-699, § 5, eff. Jan. 1, 2005). These and other issues concerning defendant's assessments require that factual findings be made by the trial court.

¶ 12 Because we find remand to be the appropriate remedy here, this court need not decide the *ex post facto* issues raised by defendant. Accordingly, we remand the matter to the trial court with directions to review and, if necessary, correct the costs summarized in the clerk's cost sheets, and enter the correct amount of all financial charges in a written order. Each charge should be supported by the relevant statutory authority.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Knox County is affirmed in part and remanded.

¶ 15 Affirmed in part; remanded.