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2015 IL App (3d) 130517-U

Order filed April 24, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0517
v.)	Circuit No. 08-CF-718
)	
DWAYNE HARMON,)	Honorable
)	Sarah F. Jones,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice Wright, specially concurred.

ORDER

¶ 1 *Held:* The court systems fee is a fine, and was therefore improperly imposed by the circuit clerk.

¶ 2 Defendant, Dwayne Harmon, pled guilty to aggravated driving while license suspended (625 ILCS 5/6-303(d-3) (West 2006)) and was sentenced to a term of two years' imprisonment. Defendant filed a *pro se* petition for postconviction relief, which was dismissed as frivolous and patently without merit. On appeal from that dismissal, defendant takes issue with his monetary

assessments, arguing that they were improperly imposed by the circuit clerk. We vacate the assessments against defendant and remand for the proper judicial entry of a written order enumerating defendant's costs.

¶ 3

FACTS

¶ 4

Defendant was charged by indictment with aggravated driving while license suspended (625 ILCS 5/6-303(d-3) (West 2006)). Defendant entered a negotiated guilty plea, and was sentenced to a term of two years' imprisonment. The written sentencing order signed by the trial judge made no reference to fines, fees, or other monetary assessments. The order indicated that defendant was entitled to credit for time served in custody between May 5 and June 1, 2011.

¶ 5

A "Criminal Cost Sheet" dated December 20, 2011—the same date as sentencing—enumerates various monetary assessments levied against defendant. Section I of the cost sheet, entitled "Clerk's Fees," contains a total of \$230 in assessments, including a \$50 court systems fee. The statutory authority cited adjacent to the court systems fee is "55 ILCS 5/5-1101." Section II of the cost sheet, entitled "Penalties Imposed by the Court," contains just one assessment: a \$200 DNA database analysis fee. The total court costs, as indicated on the cost sheet, came to \$720. The line designated "Credit for time served" is blank, and \$720 is circled as the final total. The cost sheet is not signed.

¶ 6

Defendant subsequently filed a number of *pro se* postplea motions alleging, *inter alia*, that he did not receive the correct amount of presentencing credit. In response to these motions, the trial court filed multiple amended sentencing orders. The final amended sentencing order, signed by the trial judge and entered on September 25, 2012—*nunc pro tunc* to the original date of sentencing—indicated that defendant was to receive credit for time served in custody between April 27 and June 1, 2011. The court also vacated defendant's DNA analysis fee, finding that he

had already submitted his DNA in a previous matter.

¶ 7 On April 3, 2013, defendant filed a *pro se* petition for postconviction relief, alleging numerous constitutional errors. The trial court dismissed the petition as frivolous and patently without merit. This appeal follows.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant does not renew any of the constitutional claims set forth in his postconviction petition. Instead, defendant argues for the first time that the \$50 court systems fee is a fine, and was therefore improperly imposed by the circuit clerk. The State counters that the court systems fee is, indeed, a fee, and accordingly may be imposed by the clerk. We find that the court systems fee is a fine and remand for the proper judicial entry of a written order enumerating defendant's costs.

¶ 10 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). " ' "The clerk of the court is a nonjudicial member of the court and, as such, has no power to impose sentences or levy fines." ' " *People v. Shaw*, 386 Ill. App. 3d 704, 710 (2008) (quoting *People v. Swank*, 344 Ill. App. 3d 738, 747-48 (2003), quoting *People v. Scott*, 152 Ill. App. 3d 868, 873 (1987)). Where a circuit clerk acts beyond his or her authority by imposing a fine, that order is void. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14. A void order may be attacked at any time and in any court, either directly or collaterally. *People v. Thompson*, 209 Ill. 2d 19, 25 (2004).

¶ 11 A fee is a charge designed to compensate the State for expenditures incurred in the prosecution of a defendant. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fine is punitive in nature, " ' "a pecuniary punishment imposed as part of a sentence on a person convicted of a

criminal offense." ' ' " *Id.* at 250 (quoting *People v. Jones*, 223 Ill. 2d 569, 581 (2006), quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). A charge that is labeled as a fee may nevertheless be a fine. *Graves*, 235 Ill. 2d at 250. Whether an assessment constitutes a fine or a fee is an issue we review *de novo*. *People v. Marshall*, 242 Ill. 2d 285, 292 (2011).

¶ 12 The court systems fee is authorized by section 5–1101 of the Counties Code (55 ILCS 5/5–1101 (West 2006)), entitled "Additional fees to finance court system." In *Graves*, our supreme court addressed the propriety of certain assessments imposed under that section: a mental health court fee and a youth diversion/peer court fee. *Graves*, 235 Ill. 2d at 248. The court found that each "fee" was actually a fine, holding:

"We find that section 5–1101 of the Counties Code also sets forth 'fines and penalties,' although they are labeled 'fees to finance court system.' 55 ILCS 5/5–1101 (West 2006). In addition to the two subsections under which fines were imposed in this case, section 5–1101 also authorizes monetary penalties to be paid by a defendant on a judgment of guilty or a grant of supervision for violation of certain sections of the Illinois Vehicle Code or of the Unified Code of Corrections. *Id.* at 253.

In reliance upon *Graves*, this court has explicitly held that the court systems fee is actually a fine. *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30.

¶ 13 In support of its assertion that the court systems fee is a fee, the State relies upon the Fourth District cases of *People v. Larue*, 2014 IL App (4th) 120595, ¶ 70, and *Warren*, 2014 IL App (4th) 120721, ¶ 101. However, in *People v. Smith*, 2014 IL App (4th) 121118, ¶ 47-54—a case decided after *Larue* and *Warren*—the Fourth District relied upon *Graves* and *Ackerman* in finding that the court systems fee was actually a fine. The *Smith* court pointed out that whether

the assessment was a fine or a fee was not an issue in *Larue*, as neither party had raised it. *Id.* ¶ 49. Thus the authority cited by the State in the case at hand provides no support for its argument.

¶ 14 We find that the court systems fee imposed in this case was a fine, rather than a fee. Consequently, because the assessment was imposed by the circuit clerk rather than the trial court, it is void. When assessments are imposed by a circuit clerk, rather than the trial court, the cause should be remanded for proper judicial entry of fines and fees. *E.g.*, *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 17; *People v. Williams*, 2014 IL App (3d) 120240, ¶ 19.

¶ 15 While we acknowledge defendant's secondary argument that the court systems fee should be subject to credit for his time in presentence incarceration (see 725 ILCS 5/110-14 (West 2006)), we cannot—in the absence of a sum certain set out in a written, signed order—be confident in the fines or fees that the trial court intended defendant to pay. See *Hunter*, 2014 IL App (3d) 120552, ¶ 17. Accordingly, we vacate defendant's assessments and remand the matter to the trial court with directions to review and, if necessary, correct the costs summarized in the clerk's cost sheet, and enter the correct amount of all financial charges in a written order.

¶ 16 CONCLUSION

¶ 17 Defendant's monetary assessments are vacated, and the matter is remanded with instructions.

¶ 18 Vacated and remanded with instructions.

¶ 19 JUSTICE WRIGHT, specially concurring.

¶ 20 I agree the trial court, on remand, must follow the decision in *People v. Ackerman*, 2014 IL App (3d) 120585. On this basis, I concur.