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2015 IL App (3d) 130686-U

Order filed April 8, 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 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0686
)	Circuit No. 08-CF-2851
CORTEZ BRANCH,)	
Defendant-Appellant.)	Honorable Daniel J. Rozak, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Several fines and fees imposed by the circuit clerk are vacated, and the cause is remanded with directions for the trial court to: (1) order any fines; (2) apply the defendant's \$5-per-day presentence custody credit to any fines imposed; and (3) recalculate the Violent Crime Victims Assistance Fund assessment in consideration of the fines imposed.
- ¶ 2 The defendant, Cortez Branch, pled guilty to second degree murder (720 ILCS 5/9-2(a)(2) (West 2008)) and was sentenced to 12 years' imprisonment. On appeal, the defendant argues that: (1) the circuit clerk imposed several fines without an order of the trial court; (2) the

Children's Advocacy Center assessment was inapplicable at the time of his offense; (3) the electronic citation fee, "States Attorney CM" fee and drug court fee are subject to vacatur; (4) the court systems fee ordered by the trial court is a fine; (5) he is entitled to \$5-per-day presentence custody credit; and (6) the Violent Crime Victims Assistance Fund (VCVA) assessment was erroneously calculated. We affirm in part, vacate in part and remand with directions.

¶ 3

FACTS

¶ 4

The State charged the defendant by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)). The State later dismissed the first degree murder charges in exchange for the defendant's open plea to one count of second degree murder. During the July 1, 2011, sentencing hearing, the State volunteered to calculate the costs and review them with defense counsel. At the end of the hearing, the trial court sentenced the defendant to 12 years' imprisonment.

¶ 5

On July 26, 2011, the defendant filed a motion to reconsider sentence, which was amended on August 30, 2011. On that date, the court denied the defendant's motion and found that the costs were consistent with the previously proposed order. The court signed a "Criminal Cost Sheet & Court Order." The order directed the defendant to pay the following assessments:

- (1) clerk's filing fee (705 ILCS 105/27.1a (West 2008)) \$125;
- (2) court automation fee (705 ILCS 105/27.3a (West 2008)) \$15;
- (3) document storage fee (705 ILCS 105/27.3c (West 2008)) \$15;
- (4) court systems fee (55 ILCS 5/5-1101(c)(1) (West 2008)) \$50;
- (5) court security fee (55 ILCS 5/5-1101 (West 2008)) \$25;
- (6) Violent Crime Victims Assistance Fund fee (725 ILCS 240/10 (West 2008)) \$25;
- (7) DNA database analysis fee (730 ILCS 5/5-4-3(j) (West 2008)) \$200;

(8) criminal felony conviction fee (55 ILCS 5/4-2002 (West 2008)) \$30;

and

(9) sheriff's fees (55 ILCS 5/4-5001 (West 2008); \$461

725 ILCS 5/124A-5 (West 2008)).

On the same date, the court entered the judgment and sentence. The sentence awarded the defendant credit for time spent in presentence custody from November 27, 2008, to August 30, 2011.

¶ 6 On appeal, we remanded the cause to the trial court for *de novo* postplea proceedings in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Branch*, 2013 IL App (3d) 110620-U. On September 13, 2013, on remand, postplea counsel filed an amended motion to reconsider sentence and a certificate pursuant to Rule 604(d). On the same date, the court heard arguments and denied the defendant's motion.

¶ 7 A payment sheet in the supplemental common law record, dated November 7, 2013, listed the previously imposed costs, except the DNA database analysis fee, and included several assessments that were not in the costs order. The unordered assessments included:

(1) "Arrestee's Medical"	\$10;
(2) "State Police Opera"	\$15;
(3) "Drug Court Fee 1"	\$5;
(4) "Drug Court Fee 2"	\$10;
(5) "Child Advocacy Cen"	\$30;
(6) "State Police Servi"	\$10;
(7) "Electronic Citatio"	\$2;

- (8) "CC Electronic Cita" \$3;
- (9) "States Attorney CM" \$10; and
- (10) "CC Oper and Admin" \$10.

The defendant appeals from the denial of his amended motion to reconsider sentence.

¶ 8 ANALYSIS

¶ 9 The defendant raises several issues regarding the fines and fees imposed in the trial court. We review the propriety of these fines and fees *de novo*. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 23.

¶ 10 I. Fines Entered Without Authority

¶ 11 The defendant argues that the circuit clerk imposed several fines without an order of the court.

¶ 12 The imposition of a fine is a judicial act, and the clerk of a court is a nonjudicial member. As a result, the clerk has no power to impose sentences or levy fines. *People v. Swank*, 344 Ill. App. 3d 738, 748-49 (2003). The circuit clerk has the computer software to record and ensure payment of the assessed fines, but may not impose a fine without an order of the court. Moreover, fully automated fee impositions are inappropriate because of the complexities resulting from legislative amendments and variables that require human analysis. See *People v. Chester*, 2014 IL App (4th) 120564, ¶ 35.

¶ 13 Here, the trial court entered a judgment against the defendant for costs. A subsequent cost payment sheet showed that numerous other costs were imposed including: (1) an arrestee's medical assessment; (2) a State Police Operations Assistance Fund assessment; (3) a Children's Advocacy Center assessment; (4) two drug court assessments; and (5) a State Police Services Fund assessment. Each of these assessments has been judicially classified as a fine and may not

be imposed without an order of the court. See *People v. Larue*, 2014 IL App (4th) 120595, ¶ 57 (arrestee's medical assessment is a fine); *Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police Operations Assistance Fund assessment and Child Advocacy Center assessments are both fines); *People v. Unander*, 404 Ill. App. 3d 884, 890 (2010) (drug court assessment is a fine); *People v. Bell*, 2012 IL App (5th) 100276, ¶ 42 (State Police Services Fund assessment is a fine).

Therefore, we vacate these assessments and remand the cause with direction for the trial court to order any fines with citation to the authorizing statutes.

¶ 14 II. Children's Advocacy Center Fee

¶ 15 The defendant argues that the Children's Advocacy Center fee cannot be reimposed on remand because it was not authorized by a resolution of the Will County board at the time of the defendant's offense.

¶ 16 Section 5-1101(f-5) of the Counties Code provides that "[i]n each county in which a Children's Advocacy Center provides services, the county board may adopt a mandatory fee of between \$5 and \$30 to be paid by the defendant on a judgment of guilty or a grant of supervision under Section 5-9-1 of the Unified Code of Corrections for a felony[.]" 55 ILCS 5/5-1101(f-5) (West 2008).

¶ 17 The Will County board enacted a \$30 Children's Advocacy Center fee on January 1, 2009. Will County Code of Ordinances, § 37.04(C)(2)(c)(2) (eff. Jan. 1, 2009). The defendant committed the charged offense in 2008. As a result, imposition of a Children's Advocacy Center assessment violates the constitutional prohibition against *ex post facto* laws. See *People v. Maxwell*, 2011 IL App (4th) 100434, ¶ 105 (constitutional prohibition against *ex post facto* laws prevents punishment for an offense being increased by an amendatory act occurring after the offense has occurred). Therefore, on remand, the trial court may not impose a Children's

Advocacy Center fee.

¶ 18

III. Fee Errors

¶ 19

The defendant argues that the circuit clerk erroneously imposed an electronic citation fee, "States Attorney CM" fee, and a duplicate drug court fee.

¶ 20

Section 27.3e of the Clerks of Courts Act permits the assessment of a \$5 fee to defray the expense of establishing and maintaining electronic citations. 705 ILCS 105/27.3e (West 2010). Electronic citation means "the process of transmitting traffic, misdemeanor, municipal ordinance, conservation, or other citations and law enforcement data via electronic means to a circuit court clerk." *Id.*

¶ 21

In the instant case, the defendant was convicted of second degree murder, a Class 1 felony. 720 ILCS 5/9-2(d) (West 2008). The plain language of section 27.3e enumerates specific types and classes of offenses to which the fee applies. Class 1 felonies are not included in the classes of offenses to which the electronic citation fee applies. Therefore, we vacate the defendant's electronic citation fee.

¶ 22

The defendant argues that the circuit clerk erroneously imposed the "States Attorney CM" fee. Section 4-2002 of the Counties Code, "State's attorney fees in counties under 3,000,000 population[,]" permits the imposition of a \$30 fee following a conviction for second degree murder, and a fee of \$15 for a conviction on other offenses tried before circuit judges or \$10 if the case may be assigned to an associate judge. 55 ILCS 5/4-2002(a) (West 2010).

¶ 23

Here, the trial court ordered the defendant to pay a \$30 criminal felony conviction fee pursuant to section 4-2002 of the Counties Code. The cost payment sheet includes this fee and a "States Attorney CM" fee of \$10. Because the defendant was convicted of second degree murder, and the court ordered a \$30 fee, we vacate the "States Attorney CM" fee of \$10.

¶ 24 The defendant also argues that the circuit clerk erroneously imposed two drug court fees. Section 5-1101 of the Counties Code granted Will County the authority to enact by ordinance a "\$10 fee to be paid by the defendant on a judgment of guilty *** to be placed in the county general fund and used to finance the county mental health court, the county drug court, or both." 55 ILCS 5/5-1101(d-5) (West 2008). As we noted *supra*, the drug court fee is a fine that may not be imposed by the circuit clerk without an order of the trial court. Additionally, the defendant correctly points out that the circuit clerk imposed two drug court assessments, one at a rate of \$5 and one at \$10. Therefore, we vacate both of the defendant's drug court fees.

¶ 25 IV. Court Systems Fee

¶ 26 The defendant argues that the court systems fee is a fine subject to the \$5-per-day presentence custody credit. See *People v. Ackerman*, 2014 IL App (3d) 120585. The State argues that *Ackerman* was wrongly decided, and the court systems fee is not a fine.

¶ 27 In the instant case, the \$50 court systems fee was imposed under section 5-1101 of the Counties Code. 55 ILCS 5/5-1101 (West 2008). Subsection 5-1101(c)(1) allows a county board to enact by ordinance or resolution a \$50 "fee to be paid by the defendant on a [felony] judgment." 55 ILCS 5/5-1101(c)(1) (West 2008).

¶ 28 The critical difference between a fee and a fine is that a fee is intended to compensate the state for any costs it incurred in prosecuting the defendant. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). In *Ackerman*, this court applied the *Graves* analysis in holding that a \$50 court system fee that was deposited into the county's general fund and used to finance the county's court system was a fine. *Ackerman*, 2014 IL App (3d) 120585, ¶ 30.

¶ 29 Here, section 37.04 of the Will County Ordinances provides that a \$50 "court services fee" shall be "added to all fines imposed." Will County Code of Ordinances § 37.04(C)(b)(3)

(2008). This assessment is to be used to finance court security and raise general funds, and the proceeds of the assessment are to be placed "in a separate fund to be maintained in the office of the County Treasurer." Will County Code of Ordinances § 37.04(A)(5) (2008). Therefore, consistent with our holding in *Ackerman*, we conclude that the court systems fee is a fine. Accordingly, on remand, we direct the trial court to apply the defendant's presentence custody credit to the court systems fee.

¶ 30 V. \$5-per-day Presentence Custody Credit

¶ 31 The defendant argues that he is entitled to apply his \$5-per-day presentence custody credit toward any fines imposed on remand. Section 110-14 of the Code of Criminal Procedure of 1963 allows a "person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense *** a credit of \$5 for each day so incarcerated." 725 ILCS 5/110-14(a) (West 2008). The credit is applicable only to a defendant's fines. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006).

¶ 32 Here, the defendant was in presentence custody from November 27, 2008, to August 30, 2011, a total of 1,006 days. As a result, the defendant is entitled to offset his fines by a total of \$5,030 of presentence custody credit. On remand, we direct the trial court to apply this credit to any fines imposed.

¶ 33 VI. Violent Crime Victims Assistance Fund Assessment

¶ 34 The defendant argues that the VCVA assessment must be amended because the \$25 assessment only applies when no other fines are imposed, and in the instant case, the trial court imposed fees that were classified as fines.

¶ 35 Section 10 of the Violent Crime Victims Assistance Act imposes a penalty of \$25 for the conviction of second degree murder, a crime of violence, where no other fines are imposed. 725

ILCS 240/10(c)(1) (West 2008); 740 ILCS 45/2(c) (West 2008); 720 ILCS 5/9-2(a)(2) (West 2008). Where other fines are assessed, section 10 imposes a VCVA assessment of "\$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008).

¶ 36 Here, the court imposed in the cost order a \$25 VCVA assessment. However, the classification of the court systems fee as a fine requires that the VCVA assessment be recalculated. Additionally, on remand, the court may elect to impose additional fines, which will require further recalculation of the VCVA assessment at the statutory rate of \$4 for every \$40 in fines imposed. As a result, we vacate the \$25 VCVA assessment. On remand, we direct the trial court to recalculate the assessment in light of any and all fines imposed.

¶ 37 CONCLUSION

¶ 38 The judgment of the circuit court of Will County is affirmed in part, vacated in part and remanded with directions.

¶ 39 Affirmed in part, vacated in part, remanded with directions.