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2015 IL App (3d) 130904-U

Order filed December 21, 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 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0904
)	Circuit No. 10-CF-25
LISA M. GONZALEZ,)	
Defendant-Appellant.)	Honorable Cynthia M. Raccuglia, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court affirmed where the only issue raised on appeal is a voidable fee issue never raised in the trial court.

¶ 2 Upon early revocation of her probation, defendant, Lisa M. Gonzalez, appeals, arguing that a portion of her probation fee should be vacated to reflect the amount of time she was actively supervised by the probation and court services department. As defendant did not raise this issue in the trial court, she has forfeited this argument on appeal. We affirm.

3 FACTS

¶ 4 In 2010, the State charged defendant with retail theft (720 ILCS 5/16A-3(a) (West 2010)). Defendant entered into a blind plea and, on December 3, 2010, was sentenced to 30 months' probation, 180 days' imprisonment, and ordered to pay a \$25-per-month probation fee. The court also imposed a requirement that defendant not enter any retail establishment unless accompanied by an adult with no criminal history. After the sentence was imposed, the probation fee for all 30 months' probation, \$750, was deducted from defendant's bond. Defendant did not appeal.

¶ 5 In October 2012, the State filed a petition to revoke probation, alleging that defendant violated her probation by entering a store without adult supervision and again committing retail theft. Defendant admitted the allegations in the petition on November 29, 2012. A sentencing hearing was held and defendant was sentenced to six years' imprisonment. Defendant filed a motion to reconsider, which the trial court denied. Defendant never requested a change to her probation fee upon revocation of her probation, at sentencing, or in her motion to reconsider.

¶ 6 ANALYSIS

¶ 7 Defendant's sole argument on appeal is that a portion of her probation fee should be vacated to reflect the time she actually spent on probation before it was revoked. The State disagrees and also challenges this court's jurisdiction. Upon review, we find jurisdiction to consider defendant's appeal, and hold that, because defendant did not raise her probation fee argument in the trial court, it is forfeited here on appeal.

¶ 8 At the outset, the State challenges our jurisdiction on the grounds that defendant did not file a motion to withdraw her original guilty plea or a motion to reconsider her original sentence of probation pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), or file a notice of

appeal after her guilty plea and original sentence pursuant to Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009).

¶ 9 With regard to Rule 604(d), we call attention to the fact that the supreme court has held that a defendant does not need to comply with Rule 604(d) before appealing from an order revoking probation. *People v. Tufte*, 165 Ill. 2d 66, 74-78 (1995).

¶ 10 With regard to Rule 606, we note that a timely filing of a notice of appeal is the only jurisdictional step required to initiate appellate review. *People v. Lewis*, 234 Ill. 2d 32, 37 (2009). Defendant's probation was revoked on November 29, 2012.¹ She was sentenced on February 14, 2013. Defendant filed a motion to reconsider, which was denied on November 21, 2013. This order denying her motion to reconsider is the final appealable order in the instant case. See Ill. S. Ct. R. 606(b) (eff. Mar. 20, 2009). She filed her notice of appeal four days later on November 25, 2013. Defendant complied with all jurisdictional requirements necessary to perfect her appeal.

¶ 11 For purposes of clarity, we note, defendant is not challenging her original plea or sentence. The revocation issue defendant presents is only incidental to the guilty plea and her original sentence, and did not actually arise until her probation was revoked. We hold that we have jurisdiction to consider this appeal.

¶ 12 In coming to this conclusion, we reject the State's reliance on *In re J.T.*, 221 Ill. 2d 338 (2006), and *People v. Hood*, 387 Ill. App. 3d 380 (2008). These cases are factually distinguishable. *Hood* does not even consider a revocation of probation issue. *Hood*, 387 Ill.

¹We note that absent a subsequent motion for reconsideration directed against a judgment revoking probation (see Ill. S. Ct. R. 606(b) (eff. Mar. 20, 2009)), such a judgment is a final appealable order. See 730 ILCS 5/5-6-4(g) (West 2010).

App. 3d at 380. *J.T.* considered a defendant who used his appeal after his probation revocation to contest improper admonishments that had been given in his original probation sentence, an issue that could have been raised in an appeal from that original sentence. *J.T.*, 221 Ill. 2d at 346-47. Here, the calculation of defendant's probation fee did not become an issue until her probation was revoked; therefore, it could not have been raised in an appeal from her original sentence.

¶ 13 Turning now to the merits of defendant's appeal, defendant argues that the court should vacate a portion of her probation fees to reflect the time she actually spent on probation before her probation was revoked. While no one, including the State, has dealt with the waiver/forfeiture issue, we can affirm the trial court for any reason apparent in the record. *People v. Nash*, 173 Ill. 2d 423, 432 (1996). Defendant never raised this issue in the trial court.

¶ 14 "Generally, a defendant's argument is forfeited on appeal if it was not raised in the trial court." *People v. Morgan*, 385 Ill. App. 3d 771, 773 (2008) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)).² Any irregularity or defect that is not brought to the attention of the trial court is deemed forfeited. Ill. S. Ct. R. 615. It is important for a party to raise these specific issues at

²Although the *Enoch* court discussed waiver, we note—as has the supreme court itself—that there is a distinct difference between waiver and forfeiture. See *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 320-21 n.2 (2008) ("While waiver is the voluntary relinquishment of a known right, forfeiture is the failure to timely comply with procedural requirements. [Citations.] These characterizations apply equally to criminal and civil matters."). Thus the relinquishment of an argument through failure to bring it in the trial court is properly termed a forfeiture of that argument.

trial and in a posttrial motion in order to give the trial court an opportunity to correct the error claimed. *People v. Hope*, 184 Ill. 2d 39, 45 (1998).

¶ 15 Here, defendant was sentenced to 30 months' probation. A \$25 fee for each of those 30 months' was deducted from her bond when the sentence was entered. Before completing 30 months' probation, defendant's probation was revoked. Defendant failed to raise any issue regarding the \$25 fee at this time. Defendant also failed to raise the issue in her subsequent posttrial motion. Defendant cannot now raise this issue for the first time on appeal. See *Enoch*, 122 Ill. 2d at 186; *Morgan*, 385 Ill. App. 3d at 773. See also *Parks v. Kownacki*, 193 Ill. 2d 164, 180 (2000).

¶ 16 In making this determination, we reject defendant's reliance upon *People v. Wynn*, 2013 IL App (2d) 120575. *Wynn* did not involve forfeiture. *Id.* ¶ 33.

¶ 17 We also reject defendant's claim that the portion of her probation fees that were collected for the time during which she was not being actively supervised by the probation department are void and thus can be raised at any time. A sentence that does not conform to a statutory requirement is void and may be challenged at any time. *People v. Roberson*, 212 Ill. 2d 430, 440 (2004); *People v. Arna*, 168 Ill. 2d 107, 113 (1995). Illinois courts have differentiated fees from fines in the sentencing context. Fines are " 'pecuniary punishment[s] imposed as part of a sentence on a person convicted of a criminal offense.' " *People v. Jones*, 223 Ill. 2d 569, 581 (2006) (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). Conversely, fees do not " 'punish a defendant in addition to the sentence he received' "; instead, a fee compensates the State for the expense of the defendant's prosecution and is a collateral consequence of the defendant's conviction. *Id.* (quoting *White*, 333 Ill. App. 3d at 781). An incorrect fine imposed as part of a sentence is void, and may, therefore, be challenged at any time. See *Roberson*, 212

Ill. 2d at 440; *Jones*, 223 Ill. 2d at 581. An incorrect fee is not part of the sentence, and, as a collateral consequence of the decision, is only voidable. See *Roberson*, 212 Ill. 2d at 440; *Jones*, 223 Ill. 2d at 581. Although the statutory label of "fee" is not dispositive of whether the monetary figure is a fine or a fee, courts, including this court, have held that probation fees are fees and not fines. *People v. Despenza*, 318 Ill. App. 3d 1155, 1157 (2001); *White*, 333 Ill. App. 3d at 782.

¶ 18 In this case, the court had jurisdiction to enter the sentence, including the probation fees, and did not exceed its jurisdiction in doing so. 730 ILCS 5/5-6-3(i) (West 2010). Since the \$25-per-month probation fee is a fee and not a fine (*Despenza*, 318 Ill. App. 3d at 1157), the fee is not void. Therefore, the probation fee issue may not be raised at any time. Defendant failed to raise this issue in the trial court. We will not address it here.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 21 Affirmed.