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2015 IL App (3d) 140299-U

Order filed May 18, 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 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0299
)	Circuit No. 12-CF-1301
WILLIE DILLARD,)	
Defendant-Appellant.)	Honorable Stephen A. Kouri, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Cause is remanded for proper judicial entry of a written order enumerating financial charges assessed against defendant.
- ¶ 2 Defendant, Willie Dillard, was convicted of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2012)). Defendant was sentenced to a term of four years' imprisonment and ordered to pay costs. A costs sheet filed months after sentencing showed assessments against defendant in the sum of \$4,130.50. Defendant appeals, arguing that his assessments were improperly imposed by the circuit clerk.

We remand for the proper judicial entry of a written order enumerating financial charges assessed against defendant.

¶ 3

FACTS

¶ 4

Following a bench trial, defendant was convicted of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2012)). On September 6, 2013, the court sentenced defendant to a term of four years' imprisonment followed by two years of mandatory supervised release. On the court's sentencing order, the box labeled "[t]hat a judgment be entered against the defendant for costs," has been checked.

¶ 5

On May 19, 2014, this court allowed defendant's late notice of appeal. On July 16, 2014, a costs sheet was issued by the circuit clerk. The costs sheet, which is not signed by the trial court, indicated total monetary charges against defendant in the sum of \$4,130.50. The sheet did not contain statutory authorization for any of the assessments and did not reference any monetary credit for time served in presentence custody.

¶ 6

ANALYSIS

¶ 7

On appeal, defendant contends that his costs were improperly imposed by the circuit clerk and that he did not receive the \$5-per-day presentence incarceration credit to offset his fines. We agree, and remand the matter for proper judicial entry of a written order enumerating financial charges assessed against defendant.

¶ 8

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, ¶ 82 (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).

¶ 9 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. This court has consistently found remand to be appropriate because "[a]ny miscalculations with regard to monetary charges are best addressed in the trial court, with both parties present." *Hunter*, 2014 IL App (3d) 120552, ¶ 17.

¶ 10 In the case at hand, the trial court's only reference to defendant's assessments was the checking of a box on the sentencing order. As in *Hunter*, the trial court never entered a written judgment order enumerating a sum certain. *Hunter*, 2014 IL App (3d) 120552, ¶ 17. The calculation of defendant's assessments was apparently completed by the clerk, and reflected in a costs sheet that does not bear a judicial signature. Indeed, the State concedes that the costs in this case—including a number of fines—were entered by the circuit clerk. Furthermore, because the case payments 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 Here the State concedes that some costs entered by the clerk were improper, but also alleges that some were fees, and therefore properly imposed. It has been the position of this court that on remand the trial court should reconsider a defendant's costs in their entirety. See, *e.g.*, *People v. Dillard*, 2014 IL App (3d) 121020, ¶ 15. Accordingly, because we find remand to

be the appropriate remedy here, this court need not decide the propriety of each individual assessment. Instead, we remand the matter to the trial court with directions to review and, if necessary, correct the costs summarized in the clerk's costs sheet, and enter the correct amount of all financial charges in a written order. Each charge should be supported by the relevant statutory authority.

¶ 12

CONCLUSION

¶ 13

The case is remanded with instructions.

¶ 14

Remanded with instructions.