

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

March 10, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2015 IL App (4th) 130691-U

NO. 4-13-0691

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
RICHARD J. HAAS,	)	No. 12DT40
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court vacated certain fines improperly imposed and remanded for the proper imposition of all mandatory fines.

¶ 2 In February 2013, a jury found defendant, Richard J. Haas, guilty of driving under the influence (DUI) with any amount of a controlled substance in his body (625 ILCS 5/11-501(a)(6) (West 2010)). The trial court sentenced defendant to 24 months' conditional discharge and imposed certain assessments. On appeal, defendant argues certain fines were improperly imposed. We vacate those fines improperly imposed and remand for the proper imposition of all mandatory fines.

¶ 3 I. BACKGROUND

¶ 4 In March 2012, the State charged defendant by uniform traffic complaint with

DUI of alcohol (625 ILCS 5/11-501(a)(2) (West 2010)). In July 2012, the State filed a motion for leave to amend the complaint to DUI with any amount of a controlled substance in the body (625 ILCS 5/11-501(a)(6) (West 2010)), which was granted. In February 2013, a jury found defendant guilty. The trial court sentenced defendant to 24 months' conditional discharge and 60 days in the Livingston County jail, with 40 days stayed and two days of credit against his sentence. In its oral pronouncement of the sentence, the court imposed a \$1,000 DUI-arresting-agency fine, \$100 trauma-fund fine, \$150 DUI-analysis fine, and \$200 discretionary fine. In its written sentencing order, the court further imposed a \$340 lump-sum-surcharge fine, \$75 violent-crimes-victim's-assistance fine, \$5 drug-spinal-cord fine, \$20 children's-advocacy-center fine, \$136 driver's-education-fund fine, and \$10 arrestee's-medical fine.

¶ 5 In July 2013, defendant filed a motion to reconsider his sentence. In relevant part, defendant asserted the \$1,000 DUI-arresting-agency fine should be reduced to \$750 because it was his first conviction for DUI. After a hearing on the motion, the court reduced the fine to \$750. It also vacated the \$200 discretionary fine. The court did not recalculate the driver's-education-fund fine or lump-sum-surcharge fine.

¶ 6 This appeal followed.

## ¶ 7 II. ANALYSIS

¶ 8 On appeal, defendant argues certain fines were improperly imposed. Specifically, defendant argues (1) the serious-traffic-violation fine (625 ILCS 5/16-104d (West 2010)) was improperly imposed by the circuit clerk and should be vacated and reassessed on remand; (2) an additional \$5 imposed under the trauma-fund fine (730 ILCS 5/5-9-1(c-5) (West 2010)) should be vacated as it was beyond the penalty mandated by statute; and (3) the driver's-education-fund

fine (625 ILCS 5/16-104a(a) (West 2010)) and lump-sum-surcharge fine (730 ILCS 5-9-1(c) (West 2010)) should be recalculated and reassessed on remand as the trial court failed to do so after reducing the DUI-arresting-agency fine and vacating the discretionary fine. In response, the State concedes (1) the circuit clerk improperly imposed the serious-traffic-violation fine (625 ILCS 5/16-104d (West 2010)) and argues it should be vacated and reassessed on remand; (2) the additional \$5 under the trauma-fund fine (730 ILCS 5/5-9-1(c-5) (West 2010)) was improperly imposed and should be vacated; and (3) the driver's-education-fund fine (625 ILCS 5/16-104a(a) (West 2010)) and lump-sum-surcharge fine (730 ILCS 5-9-1(c) (West 2010)) should be recalculated and reassessed on remand. The State further proffers the question of whether the \$75 violent-crimes-victims-assistance fine was properly applied. Finally, the State claims the following fines should be imposed on remand: (1) a \$30 juvenile-expungement fine (730 ILCS 5/5-9-1.17(a) (West 2010)); (2) a \$5 state-police-operations fine (705 ILCS 105/27.3a(1), (1.5), (5) (West 2010)); and (3) a roadside-memorial-fund fine (730 ILCS 5/5-9-1.18 (West 2010)), if the trial court does not waive it. We address these issues in turn.

¶ 9 In determining whether a particular assessment was properly imposed by the trial court or the circuit clerk, we look to the statutory language mandating the imposition of the assessment. *People v. Warren*, 2014 IL App (4th) 120721, ¶ 92, 16 N.E.3d 13. "Because the issues presented are ones of statutory construction, our review is *de novo*." *People v. Smith*, 2014 IL App (4th) 121118, ¶ 21, 18 N.E.3d 912.

¶ 10 A. The Serious-Traffic-Violation Fine: A Fine Improperly Imposed by the Clerk

¶ 11 Defendant argues, and the State concedes, the serious-traffic-violation fine (625 ILCS 5/16-104d (West 2010) (eff. Sept. 20, 2010)), was improperly imposed by the circuit clerk

and should be vacated and reassessed on remand. The State further notes, and defendant concedes, the clerk imposed a \$20 fine, while the statute mandates the imposition of a \$35 fine. "This court has consistently held the circuit clerk does not have the power to impose fines." *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246. The imposition of a fine is exclusively a judicial act. *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. When the record indicates fines have been improperly imposed by the circuit clerk, we will vacate those fines and remand for the proper imposition by the trial court. *Warren*, 2014 IL App (4th) 120721, ¶ 85, 16 N.E.3d 13. This court will review the oral pronouncement of the sentence and the written sentencing order in determining whether an assessment was improperly imposed. *Smith*, 2014 IL App (4th) 121118, ¶ 19, 18 N.E.3d 912. The serious-traffic-violation fine (625 ILCS 5/16-104d (West 2010)) is a fine because "the money is not used to recoup expenses incurred in prosecuting a defendant." *People v. Higgins*, 2014 IL App (2d) 120888, ¶ 32, 13 N.E.3d 169. The common-law record indicates this fine was imposed by the circuit clerk. Therefore, we accept the State's concession and vacate the \$20 fine imposed and direct the trial court to reassess a \$35 fine on remand. See 625 ILCS 5/16-104d (West 2010) (eff. Sept. 20, 2010).

¶ 12                   B. The Trauma-Fund Fine: A \$5 Punishment Exceeding the Statute

¶ 13                   The trial court imposed a \$100 trauma-fund fine (730 ILCS 5/5-9-1(c-5) (West 2010) (eff. July 1, 2009)). The common-law record indicates the circuit clerk imposed an additional \$5 under this assessment. Defendant argues the additional \$5 should be vacated as it is in excess of the punishment mandated by statute. The State concedes this error. "A trial court is obligated to order the criminal penalties mandated by the legislature and has no authority to

impose punishment other than what is provided for by statute." *Warren*, 2014 IL App (4th) 120721, ¶ 152, 16 N.E.3d 13. As the additional \$5 exceeds the punishment provided by statute, we accept the State's concession and vacate the additional \$5 imposed.

¶ 14 C. The Violent-Crime-Victims-Assistance Fine: A Miscalculated Fine

¶ 15 The trial court imposed a \$75 fine pursuant to section 10(b)(3) of the Violent Crime Victims Assistance Act (Act) (725 ILCS 240/10(b)(3) (West 2012) (eff. July 16, 2012)). Subsection 10(b)(2) of the Act mandates a \$50 fine applies to "any offense under the Illinois Vehicle Code," with exceptions not applicable here. 725 ILCS 240/10(b)(2) (West 2012). Subsection 10(b)(3) of the Act mandates a \$75 fine applies to "any misdemeanor." 725 ILCS 240/10(b)(3) (West 2012). As defendant's conviction is both a misdemeanor and an offense under the Illinois Vehicle Code (See 625 ILCS 5/11-501(a)(6) (West 2010)), the State asserts, "it is unclear whether the \$75 fine, the \$50 fine, or both should apply to defendant's conviction." In response, defendant contends to the extent there is an overlap in applicable subsections this court should apply the rule of lenity. We need not reach this question.

¶ 16 The language relied upon was added by Public Act 97-816 (eff. July 16, 2012). As the amendment did not take effect until *after* the date of the offense (March 2012), to impose a fine pursuant to this amendment would violate *ex post facto* principles. *People v. Devine*, 2012 IL App (4th) 101028, ¶ 10, 976 N.E.2d 624. At the time the offense was committed, subsection 10(b) of the Act (725 ILCS 240/10(b) (West Supp. 2011)), mandated "an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed." Accordingly, we vacate the \$75 fine and remand for the trial court to recalculate the fine pursuant to the statute in effect when the offense was committed. See 725 ILCS 240/10(b) (West Supp. 2011) (eff. July 14, 2011).

¶ 17

#### D. Additional Fines and Recalculation

¶ 18

We further remand to the trial court for the proper imposition of all mandatory fines, including a \$30 juvenile-expungement fine (730 ILCS 5/5-9-1.17(a) (West 2010) (eff. July 2, 2010)), and a \$5 state-police-operations fine (705 ILCS 105/27.3a(1), (1.5), (6) (West Supp. 2011) (eff. Aug. 19, 2011)). See *Warren*, 2014 IL App (4th) 120721, ¶¶ 127, 140, 16 N.E.3d 13; *People v. Williams*, 2013 IL App (4th) 120313, ¶¶ 18, 24, 991 N.E.2d 914. We further direct the trial court to recalculate those fines based on the gross amount of all applicable fines, including the (1) driver's-education-fund fine (625 ILCS 5/16-104a(a) (West 2010) (eff. July 22, 2010)), (2) lump-sum-surcharge fine (730 ILCS 5-9-1(c) (West 2010) (eff. July 1, 2009)), and (3) violent-crimes-victim's-assistance fine (725 ILCS 240/10(b) (West Supp. 2011) (eff. July 14, 2011)).

¶ 19

#### III. CONCLUSION

¶ 20

We vacate those fines improperly imposed and remand for the proper imposition of all mandatory fines. We otherwise affirm defendant's conviction. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 21

Affirmed in part and vacated in part; cause remanded with directions.