2015 IL App (4th) 130862-U

NO. 4-13-0862

FILED
June 10, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
ROBERT D. EDGE,	)	No. 01CF144
Defendant-Appellant.	)	
	)	Honorable
	)	John C. Costigan,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's section 2-1401 petition where he failed to meet his burden of proof, but defendant's case must be remanded for an amended sentencing judgment for the proper imposition of fines and fees.

¶ 2 After a March 2003 trial, a jury found defendant, Robert D. Edge, guilty of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)). Defendant was sentenced to two consecutive 12-year prison terms. Defendant appealed, and this court affirmed his convictions and sentences. *People v. Edge*, No. 4-03-0889 (Oct. 21, 2005) (unpublished order under Supreme Court Rule 23). In April 2013, defendant filed an amended petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2012)). In August 2013, the Woodford County circuit court denied defendant's amended petition.

¶ 3 Defendant appeals, arguing (1) his sentencing judgment should be amended to

reflect he is not subject to truth in sentencing, and (2) his case should be remanded for the trial court to enter a written order regarding his fines, fees, sentencing credit, and bond. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In January 2002, a grand jury indicted defendant on two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)), alleging that between May 1, 1997, and June 12, 1999, defendant, who was over the age of 17, committed an act of sexual penetration with A.C., who was under the age of 13 when the act was committed, in that (1) his penis made physical contact with A.C.'s vagina and (2) he placed his fingers inside her vagina. Defendant pleaded not guilty.

¶ 6 In March 2003, defendant's jury trial commenced. The testimony relevant to the issues on appeal follows. A.C. testified she was born on June 12, 1986. She stated she lived in El Paso, Illinois, between the ages of 10 and 13 and shared the house with her mother, her brother and sister, and defendant, her ex-stepfather. When she was "about 12" years old, she stayed home from school one day because she was sick. A.C. was "not positive" about the time of year but noted "it was sunny out" and there was no "really bad weather." That day, A.D.'s mother went to work, and defendant stayed home with her. While A.D. and defendant were alone at home, defendant sexually assaulted her. On cross-examination, A.C. testified the incident occurred "about a year, maybe a year and-a-half" before she moved from El Paso.

¶ 7 Laurie Moore testified she was A.C.'s mother and defendant's ex-wife. Moore testified she married defendant on June 1, 1996. She first testified they moved to El Paso in 1998 but later testified it was May 1997. She and the children moved from El Paso on June 12, 1999. She also noted A.C. was around 12 when they lived in El Paso.

¶ 8 Defendant testified on his own behalf. He denied committing the alleged offenses. Defendant also denied ever admitting to Moore he committed the alleged offenses.

¶ 9 At the conclusion of the trial, the jury found defendant guilty of both counts of predatory criminal sexual assault of a child. In June 2003, defendant filed a motion for a new trial, which the trial court denied. In September 2003, the trial court held defendant's sentencing hearing and sentenced defendant to two consecutive 12-year prison terms. Before sentencing defendant, the court confirmed with both attorneys that (1) the minimum sentence defendant could receive was six years in prison and (2) defendant would serve 85% of his sentence. Defense counsel's agreement to the latter was by nodding his head up and down as noted by the court reporter. In the written sentencing judgment, the court imposed a $100 sexual-assault fine, a $100 domestic-violence fine, and $980 in costs, which the court stated included a $200 deoxyribonucleic acid assessment. The criminal-felony-cost sheet indicates the $980 in costs included other fees and fines as well.

¶ 10 Defendant filed a direct appeal and asserted (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he received ineffective assistance of counsel at trial. As stated, this court affirmed his convictions and sentences.

¶ 11 In March 2013, defendant filed his section 2-1401 petition, challenging the imposition of mandatory supervised release (MSR). In April 2013, defendant filed an amended section 2-1401 petition, adding the additional claim he should serve his sentences at 50% because truth-in-sentencing does not apply to his sentences.

¶ 12 On August 26, 2013, the trial court held a hearing on defendant's amended section 2-1401 petition. Defendant did not present any evidence or make an argument. On August 28, 2013, the court entered a written order, denying defendant's amended section 2-1401 petition.

The order did not specifically address defendant's truth-in-sentencing claim.

¶ 13 In October 2013, this court allowed defendant's timely motion for leave to file a late notice of appeal. See Ill. S. Ct. R. 303(d) (eff. May 30, 2008). Defendant's late notice of appeal was in compliance with Illinois Supreme Court Rule 303(b) (eff. May 30, 2008), and thus we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 14 II. ANALYSIS

¶ 15 A. Section 2-1401

¶ 16 Section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)) establishes a statutory procedure that allows for the vacatur of a final judgment older than 30 days. While section 2-1401 is a civil remedy, Illinois courts also apply it to criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 22-23 (2007). A petition for relief from judgment brought under section 2-1401 must be filed no later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2012). However, the two-year statute of limitations does not apply where the judgment being challenged is void. *People v. Harvey*, 196 Ill. 2d 444, 447, 753 N.E.2d 293, 295 (2001). In this case, defendant is claiming the judgment is void and the two-year statute of limitations does not apply.

¶ 17 To obtain relief under section 2-1401, the petitioner must prove by a preponderance of the evidence "a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *Vincent*, 226 Ill. 2d at 7-8, 871 N.E.2d at 22. "However, where, as in this case, a petitioner seeks to vacate a final judgment as being void (735 ILCS 5/2-1401(f) (West 2002)), the allegations of voidness 'substitute[ ] for and negate[ ] the need to allege a meritorious defense and due diligence.' " *Vincent*, 226 Ill. 2d at 7 n.2, 871 N.E.2d at 22 n.2

(quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 202 (2002)).

¶ 18 As to the standard of review, if the trial court grants a section 2-1401 petition after an evidentiary hearing, this court reviews the judgment under a manifest-weigh-of-the-evidence standard. *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 440, 934 N.E.2d 1, 12 (2010). However, when the trial court either summarily dismisses the section 2-1401 petition or rules on the petition based on the pleadings alone without an evidentiary hearing, the reviewing court apples the *de novo* standard of review. *Vincent*, 226 Ill. 2d at 14-16, 871 N.E.2d at 26-27. Here, no evidence was presented at the August 2013 hearing, and thus we review the matter *de novo*.

¶ 19 B. Truth in Sentencing

¶ 20 Section 3-6-3(a)(2) of the Unified Code of Corrections (Unified Code) is commonly known as the truth-in-sentencing law and limits sentencing credit certain prisoners are eligible to receive. See 730 ILCS 5/3-6-3(a)(2) (West 2012). In 1995, the legislature first enacted the truth-in-sentencing law under Public Act 89-404 (Pub. Act 89-404, § 40 (eff. Aug. 20, 1995)). In *People v. Reedy*, 295 Ill. App. 3d 34, 36, 692 N.E.2d 376, 379 (1998), the Second District held Public Act 89-404 unconstitutional because it violated the single-subject rule of the Illinois constitution of 1970 (Ill. Const. 1970, art. IV, § 8(d)). While the *Reedy* case was pending before the Illinois Supreme Court, the Illinois legislature reenacted the truth-in-sentencing law by passing Public Act 90-592 (Pub. Act 90-592, § 5 (eff. June 19, 1998)). In rendering its decision in *Reedy*, the supreme court affirmed the Second District but stated Public Act 90-592 validly reenacted the truth-in-sentencing law and applied to crimes committed after its effective date, June 19, 1998. *People v. Reedy*, 186 Ill. 2d 1, 17-18, 708 N.E.2d 1114, 1121-22 (1999). Under section 3-6-3(a)(2)(ii) of the Unified Code as amended by Public Act 90-592 (see 730

ILCS 5/3-6-3(a)(2)(ii) (West 1998)), a prisoner serving a sentence for predatory criminal sexual assault of a child could not receive more than 4.5 days of good conduct credit for each month of his or her prison sentence, meaning the prisoner had to serve 85% of his sentence. Thus, in this case, defendant had to prove by a preponderance of the evidence the State's trial evidence failed to show he committed the alleged acts after June 19, 1998, for the truth-in-sentencing law not to apply to his sentence.

¶ 21 In his amended section 2-1401 petition, defendant only noted his offense could have occurred before June 19, 1998, because the written sentencing judgment notes the offense occurred between May 1, 1997, and June 12, 1999. At the August 2013 hearing on his amended section 2-1401 petition, defendant did not mention anything from the trial evidence that indicated the alleged offenses did not occur after June 19, 1998. Defendant, as the petitioner, had the burden of proof to show by a preponderance of the evidence the State's trial evidence failed to show he committed the alleged acts after June 19, 1998, and he failed to meet that burden. Accordingly, we find the trial court's denial of defendant's section 2-1401 petition was proper.

¶ 22 C. Monetary Issues

¶ 23 Defendant also requests we remand his case to the trial court for the issuance of a written order by the trial judge that correctly notes the applicable fines, fees, credits, and bond application in this case. The State concedes some of defendant's arguments but not all of them.

¶ 24 One of defendant's arguments is some of his fines were improperly imposed by the circuit clerk and not the trial court. The State agrees with defendant's assertion. This court has repeatedly held the imposition of a fine is a judicial act, and thus any fines imposed by the circuit clerk are void from their inception. *People v. Williams*, 2013 IL App (4th) 120313, ¶ 16, 991 N.E.2d 914. The record is clear the fines imposed on the second count of predatory criminal

sexual assault were not imposed by the trial court, and thus we vacate the $20 Violent Crime Victims Assistance (VCVA) fine and the $10 Arrestee Medical fine imposed on the second count of predatory criminal sexual assault. Additionally, we note both of the aforementioned fines are imposed on each count in a criminal case, and thus they were not void for that reason. See *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 113, 136, 16 N.E.3d 13. Moreover, a VCVA fine is imposed on each count, regardless of whether any other fines are imposed. See 725 ILCS 240/10(c) (West 1998) (providing for the amount of the VCVA fine when no other fines are imposed).

¶ 25 As to the first count of predatory criminal sexual assault, we disagree with defendant the trial court did not impose the fines on that count. The court expressly imposed $980 in costs, which is the same total for costs listed on the criminal-felony-cost sheet. On the criminal felony cost sheet, the $980 includes the $20 VCVA fine and the $10 Arrestee Medical fine. Since we have concluded the fines related to count I were imposed by the trial court, we do not vacate those fines.

¶ 26 Moreover, we agree with the parties some of the fees imposed on the second count of predatory criminal sexual assault should be vacated. In *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62, 64, 66, 68, 10 N.E.3d 959, this court held the clerk could not assess on each count in a criminal case a document-storage fee, an automation fee, a circuit-clerk fee, and a court-security fee against the defendant. Thus, we also vacate the $40 clerk fee, $15 security fee, $5 automation fee, and the $5 document storage fee imposed on the second count of predatory criminal sexual assault.

¶ 27 Now that we have vacated the improperly imposed fines and fees, we address what should take place on remand. When a fine is statutorily mandated, a trial court does not

have the authority to decline to impose it. See *People v. Montiel*, 365 Ill. App. 3d 601, 606, 851 N.E.2d 725, 728 (2006) (holding the defendant's sentence was void to the extent it did not include mandatory fines and fees). Accordingly, we remand the cause with directions for the trial court to impose the mandatory fines and fees on both counts as required at the time of the offense. In doing so, the court should review whether the amounts of the fines and fees already imposed on count I were in compliance with the applicable statutes and will likely need to recalculate the fines based on the amounts of other fines, *i.e.*, the VCVA fine. We note this matter is best handled by the trial court because some fines are approved by county boards, some fines are calculated based on the total amount of other fines, and the computer printout of defendant's financial obligations in this case may contain data-entry errors. We encourage the trial court to review the reference sheet this court provided in *Williams*, 2013 IL App (4th) 120313, 991 N.E.2d 914, to assist the trial courts in ensuring the statutory fines and fees in criminal cases are properly imposed. After the mandatory fines and fees are properly imposed, defendant then should receive credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 1998)) against his fines that allow such credit. See *Williams*, 2013 IL App (4th) 120313, 991 N.E.2d 914 (containing a reference sheet that notes what fines can receive credit under section 110-14(a)). After the aforementioned credit has been properly applied, the circuit clerk shall return any remaining bond money. See 725 ILCS 5/110-7(f) (West 1998).

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the denial of defendant's section 2-1401 petition, vacate the above-noted improper fines and fees, and remand the cause to the Woodford County circuit court for an amended sentencing judgment consistent with this order. As part of our

judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

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