2016 IL App (3d) 140311-U

Order filed September 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

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. 3-14-0311 Circuit No. 10-CF-2613
JESSE G. CALDERON,	)	Honorable Amy Bertani-Tomczak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of unlawful use of a weapon by a felon and aggravated assault. (2) Defendant was entitled to a lower VCVA fine. (3) Defendant was entitled to $5-per-day presentence custody credit. (4) The collection fee imposed by the circuit clerk was void as the trial court did not set a date for payment. (5) Defendant failed to meet his burden of establishing that the interest charges were unauthorized.

¶ 2 Defendant appealed from his convictions and sentence arguing: (1) the evidence was insufficient to prove him guilty of unlawful use of a weapon by a felon and aggravated assault;

(2) his Violent Crime Victims Assistance fee (VCVA) should be reduced to reflect the law at the time of the offense; (3) he was entitled to $5-per-day presentence custody credit; (4) the collection fee imposed by the circuit clerk was unauthorized; and (5) the interest charge the circuit clerk imposed was unauthorized. We affirm in part, vacate in part, and remand with directions.

¶ 3 FACTS

¶ 4 Defendant was charged by information with unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and aggravated assault (720 ILCS 5/12-2(a)(6) (West 2010)). The case proceeded to a jury trial.

¶ 5 Officer Chris Staford testified that he had been a police officer with the Crest Hill police department for 7½ years. On the night of December 10 and 11, 2010, Staford was on duty working a shift from 7 p.m. to 3 a.m. He received a report of a broken window at a restaurant and went to the scene. Officer Lacasto was with Staford. The officers saw a Joliet police car drive by with its lights activated. Lacasto used the Computer Aided Dispatch (CAD) to see what call the Joliet police were reporting to. Upon checking the CAD report, they learned that the Joliet police department was looking for a vehicle that possibly had a gun. The CAD report described the vehicle and listed the license plate number. Staford saw a vehicle matching the description drive by. Staford followed the vehicle. Once Staford got behind the vehicle, he was able to see the license plate and confirmed that it matched the license plate of the vehicle the Joliet police department was searching for.

¶ 6 Staford activated his lights and defendant pulled over. Staford exited the squad car and stood by the driver's side door of the squad car. He drew his gun for his own safety. With the spotlight and other lights from the squad car, Staford was able to see into defendant's vehicle,

saw that defendant was the only person in the car, and clearly saw defendant's face. He directed defendant to turn off the car and put his hands on the roof. Defendant initially complied with this directive, but took his hands down three or four times. "After he would drop his hands he would start the car again. [Staford] would order him to turn it off, put his hands back up. He would comply, turn, put his hands up, put his hands down, turn the car [on], and [Staford] would give the same commands." Staford said that "[a]t one point [defendant] went down to the passenger floor board completely out of [his] vision. At that point [he] started walking up towards the vehicle to try to get a better view inside."

¶ 7 Defendant started the vehicle again and began to drive away. Staford got back into the squad car and followed defendant's vehicle. Staford's lights and sirens were activated while he pursued the vehicle. He followed defendant for about 1 to 1½ minutes before defendant pulled into the driveway of a residence. Defendant exited the vehicle before it came to a complete stop, and the vehicle rolled, hitting the garage. Staford was looking at defendant's hands because he believed defendant had a weapon. Defendant started running through the lawn. Staford saw a handgun in defendant's right hand. Staford exited the squad car, identified himself as police, and told defendant to stop and drop the gun. He issued those commands several times. Defendant was running around the house "and slightly as he was turning pulled his arm back and he fired and shot a round." Staford fired one shot at defendant and then attempted to shoot again, but his weapon malfunctioned. The gun would not "feed the next round out of the magazine." Staford tipped the gun up, saw the issue, slapped the slide chamber, and then the gun was ready to shoot.

¶ 8 Staford radioed that shots were fired. He then ran after defendant. Once he approached the back of the residence, Staford saw defendant running near a bike trail. Staford testified that he saw defendant raise his hand as if to shoot at Staford again. Staford then fired two more

rounds. Defendant ran farther down the bike trail and out of Staford's line of vision. Staford ran to where he had last seen defendant and looked down the trail. When he could not see defendant in the heavily wooded area, he stopped pursuit.

¶ 9 In preparation for trial, Staford said that he reviewed "Joliet's police reports as well as the officers working with [him] that night." Later on, Staford said, "I didn't read our officers' reports. I read the report that I gave to Marc Reid from Joliet." He did not believe he stated that he read the Crest Hill reports. He had the reports, but did not read them.

¶ 10 Staford gave Detective Marc Reid of the Joliet police department an initial statement on December 11, about 1½ hours after the incident, but it was not a full statement. Reid asked Staford to give him a general walk-through. Staford said he described the perpetrator as having some stubble and a Marine-style haircut. He did not give any description of the perpetrator's height or weight. He gave Reid his full statement on December 15, 2010. Staford agreed that later he learned defendant was a suspect in the case. He was shown a photo lineup at that time and identified the shooter. Staford agreed that he could have looked up defendant's picture on the computer before seeing the photo lineup, but said that he did not do so. Staford said there would have been a record on the computer if he would have looked up defendant.

¶ 11 In his first statement on December 11, Staford did not tell Reid about defendant bending down toward the floor during the initial stop. Staford believed that he had told Reid during the full statement on December 15, but it was not included in Reid's full report. Staford also did not tell Reid or anyone else at the scene on December 11 that defendant shot at him. Staford was not sure until late morning or early afternoon on December 11 "whether [he] had really been shot at or not." He stated that this was "a very high stress situation and it takes several days for multiple things to come back to you after an incident like this." Staford also told Reid in his initial

statement that he believed he had shot two rounds at the suspect, which Staford admitted, looking back, was an incorrect statement. He also did not tell Reid that his gun malfunctioned. In his statement on December 15, Staford told Reid he saw the bullet hit the ground approximately 10 feet in front of him, which kicked up some snow, but did not mention this on December 11. Staford never showed anyone where the bullet hit.

¶ 12 Staford did not file a report. He did not know whether the Crest Hill police department guidelines required police officers to complete an incident report after discharging a firearm. Staford was aware that warning shots were prohibited under the guidelines. Staford was put on administrative leave after the incident while an investigation took place. He asked Deputy Chief Ed Clark whether he needed to do any paperwork concerning the incident. Staford was told "not to worry about it, it was being taken care of by Joliet and [internally] in [their] department." Therefore, Staford did not write a police report.

¶ 13 Staford was unaware that the guidelines mentioned *Tennessee v. Garner*, 471 U.S. 1 (1985), and stated that the Supreme Court held "that the use of deadly force to prevent the escape of a suspected felon violates the Fourth Amendment prohibition against unreasonable seizure if used against an apparently unarmed nonviolent subject." However, Staford did know that under the guidelines deadly force included "the firing of a firearm in the direction of a person even though there is no intent that exists to kill or inflict great bodily harm." Staford agreed that at the time he fired his gun at defendant, he was trying to kill or inflict great bodily harm on defendant.

¶ 14 Staford said that, though a revolver and a semiautomatic weapon were visually distinctively different, at a distance of approximately 30 feet Staford could not tell which type of gun defendant held. He also did not know how defendant was holding the gun.

¶ 15 Staford admitted that he once called in sick to work and went to a concert. He was suspended from work for three days. He also admitted that he had received a negative performance report for poor execution. In relation to the negative performance report, Staford was required to receive additional training in the areas of use of force, constitutional law, and "any other classes that would help [him] better deal with high emotional, highly fluid and dynamic situations."

¶ 16 This incident was the only time during the eight years that Staford was on the Crest Hill police department that he had discharged his weapon and been fired at.

¶ 17 Detective Lisa Giovingo testified that she had been a Joliet police officer for 22 years and that she had been a crime scene technician for 5 years. On December 11, 2010, she was called to the location of the incident. She saw a silver Chevy Impala off center in the driveway of the residence. The Chevy had run into the side molding of the garage. Giovingo also collected three identical shell casings. Though she looked for other shell casings around the area, she did not find any.

¶ 18 Lieutenant Marc Reid testified that he had been a lieutenant with the Joliet police department, Internal Affairs division for about a year, but had been a police officer for approximately 17 years. At the time of the incident, he was a sergeant in the investigations division at the Joliet police department. He was assigned to investigate the December 11, 2010, incident. Reid stated that he had found three documents inside the Impala when he searched it, all three bearing the name of defendant.

¶ 19 Reid arrived on the scene around 3:30 a.m. and talked to Staford within 5 to 10 minutes of his arrival. After speaking with Staford, Reid wrote a report. Reid agreed that on December 11, Staford never told him: (1) during the initial traffic stop, the driver leaned over so

as to completely disappear from view; (2) the driver had turned the vehicle off five times; (3) that any rounds were fired at him; or (4) the height, weight, or hair color of the perpetrator or whether the perpetrator had facial hair or wore glasses. When he spoke with Staford, Reid did not ask questions, but just let him explain. Reid said that Staford told him on December 11 that he had shot four rounds.

¶ 20 On December 16, 2010, Reid spoke with defendant at the Joliet police department. He read defendant his *Miranda* rights. Defendant signed the *Miranda* form, waived his rights, and agreed to speak to Reid and Detective Filipiak. Defendant told Reid that on the night of December 10, 2010, he had been working at Joliet Junior College in Romeoville. Defendant said he worked there from 4 p.m. on Friday, December 10 through 1 a.m. on Saturday, December 11. He said he got to work by driving the silver Chevy Impala owned by his girlfriend. He did not remember how he got home from work. He also could not remember what he did after work. Defendant denied "that he had been involved with shooting at anybody." Defendant also stated that "he [didn't] have a good license, so he [didn't] like to admit driving."

¶ 21 Reid showed Staford a photo lineup on December 15. The lineup was randomly generated by a computer at the police station. Staford identified defendant in the lineup. When Reid spoke to Staford, Staford had a union representative with him.

¶ 22 Charles Riordan testified that he lived in the residence at which the incident occurred. In March 2011 he found a shell casing in the patio on the side of his house. He kept it in a desk drawer in his house until he gave it to defendant's investigator in June 2012.

¶ 23 Edward Simon testified that he was employed as a chief investigator at defense counsel's office. He said that in his experience a semiautomatic weapon and a revolver are very distinct and if he was 30 feet away from someone and the light was good enough to see his face, he

would be able to tell whether he was holding a semiautomatic weapon or a revolver. Simon further testified that on June 9, 2012, he went to look at the residence and Riordan gave him the shell casing that he had found. Simon then turned it over to the Joliet police.

¶ 24 Defendant testified that in December 2011 he was 19 years old and worked at Lewis University in Romeoville as a cook. His girlfriend lived at the residence where the incident occurred. She had a silver Chevy Impala. Defendant sometimes drove the vehicle, and agreed that he was the driver of the car on December 11. That night he was heading to his girlfriend's house and was pulled over by a police officer. After the officer pulled him over, he shined the spotlights on defendant and told defendant to turn off the car and put his hands on the roof. Defendant complied. He only turned the car off once. He did at some point put his hands down to find his phone because it was ringing. The spotlight was reflecting off the rearview mirror, making it difficult for defendant to see. He found his phone on the floor of the passenger's side. He bent over to retrieve the phone. He wanted to call his girlfriend to let her know he had been pulled over so that she could come get the car. The officer then yelled at defendant to put his hands on the roof.

¶ 25 At some point, defendant said he turned the car on and left in order to get the car to his girlfriend's house so that it would not get towed. When defendant first got to her house, he could not pull into the driveway because he was driving too fast, so he circled around, came back, and came into the driveway on a diagonal across the yard. He then got out of the car and ran. He did not stop to put the car in park. When the defendant got out of the car, the officer was behind him. The officer told defendant to stop, but defendant kept running.

¶ 26 Defendant stated he did not have a weapon on him at all that night. When defendant was at the first corner of the house, he heard a gunshot. Defendant kept running. He ran to a bike path

and heard at least two more shots. He then hid in the bushes on the side of the bike path where he remained hidden while the police were searching for him. Defendant said he did not have a gun in his possession and did not point a gun or shoot at the officer.

¶ 27 Defendant said he spoke to Reid and denied shooting anyone, but said that he did not remember the details. Defendant acknowledged that he had been previously convicted of possession of a stolen motor vehicle. He also acknowledged that he knew that it was against the law for him to drive around with a gun.

¶ 28 Dwayne Wilkerson testified that he was the Chief of the Crest Hill police department and had been since 2009. He first started working for the police department in 1981. On December 15, 2010, Wilkerson met with Staford in relation to the December 11 incident. He wrote a report after speaking with Staford. The report stated that Staford told Wilkerson that the person driving the car had pointed and fired a gun at him. The report did not indicate that Staford had told Wilkerson that the bullet hit the ground ten feet in front of him and caused snow to fly. Staford further did not tell Wilkerson that the driver turned the car off five times.

¶ 29 Wilkerson acknowledged that, though the "Illinois Law Enforcement Training and Standards Board" guidelines required that any time an officer engaged in a pursuit, a report must be filled out, Staford did not fill out a report. Wilkerson also acknowledged that anytime a police officer discharged a firearm, he needed to complete an incident report, per the department rules. Wilkerson testified that warning shots were prohibited and his officers should be aware that they cannot use force to prevent the escape of a deadly felon under federal law. Wilkerson did investigate the incident, and Staford was not disciplined.

¶ 30 Patricia Wallace testified that she was employed with the Illinois State Police crime lab in Joliet. She was admitted as an expert witness in the area of firearms and firearms identification.

She viewed the three shell casings found after the incident and the one discovered later by Riordan and determined that they were all fired from the same weapon.

¶ 31 Both Stacy Alvarado and Carol Noyola testified that they lived on the street at the time. Alvarado heard between 2 and 10 gunshots. She looked out the window and saw a silver Chevy Impala touching the garage with a police car behind it. Noyola heard a shot and then heard 2 to 3 more shots.

¶ 32 While the jury was deliberating, defendant waived his right to a trial by jury and proceeded by bench trial, explaining he had "lost faith in [the] jury to fairly decide the issues in [the] case." After reviewing the evidence, defendant was found guilty of both charges. Defendant filed a posttrial motion for judgment notwithstanding the verdict or, in the alternative, a new trial arguing that Staford was not a credible witness and his statements were inconsistent. In denying the motion, the court said:

> "I was prepared not to believe Officer Stafford [*sic*] based upon all the pretrial motions and all that stuff. But I sat here and watched him and listened to him with a jaded eye. And I ruled the way I did because it was credibility. You know what I mean. That was it. I'm being honest with you. I came in here based upon all the different motions that were filed and all the arguments and with that mindset, not completely set but—and I found him to be credible despite it all. So I know you are arguing credibility. That's it. I found him, despite it all in the manner and way that he testified, how he testified, how he answered the questions, how he conducted himself under your—the State's direct examination, cross-examination—that's how it was. It wasn't—I wasn't feeling pressure, you know, like you started to say. Like I said, he started a little bit behind the eight ball right

from the start. But it was credibility. I found him, based upon it all, to be credible."

¶ 33 The court sentenced defendant to eight years in the Department of Corrections for unlawful use of a weapon by a felon, with three years for aggravated assault of a peace officer to run concurrently. The court stated, defendant is "entitled to credit for time served plus all good time credit that applies and there will be a judgment for the outstanding fines and costs if you have those calculated." The State asked the court to enter a judgment in the amount of $659 and stated that defendant had credit for 769 days served. Defendant did not object. The court then said, "That will be the sentence of the Court."

¶ 34 A sentencing order was filed the same day with a criminal cost sheet attached. The cost sheet imposed, *inter alia*, a VCVA fine of $100, but did not provide for $5-per-day credit for time served. No date for payment was set in the cost sheet or the court's oral pronouncement.

¶ 35 A motion to reconsider sentence, which did not challenge the monetary judgment, was denied on April 1, 2014, and defendant filed a timely notice of appeal the same day. The record further shows a printout from the circuit clerk from June 4, 2014, listing the fees and fines that defendant owed, including a collection fee of $197 and an interest charge of $18 that were not included in the original cost sheet.

¶ 36 ANALYSIS

¶ 37 On appeal, defendant argues: (1) "[t]he State failed to prove beyond a reasonable doubt that [defendant] possessed a firearm or pointed one at a police officer, where the State's case rested wholly on testimony that was improbable, unconvincing, and contrary to human experience"; (2) the VCVA fine should be reduced to $12 as defendant should have been given the option of sentencing under the guidelines at the time the offense occurred or at the time of

sentencing; (3) he should have received a monetary credit for his presentence custody; (4) the collection fee should be vacated as the court did not set a deadline for payment; and (5) the interest fee should be vacated as no date for payment was set.

¶ 38 I. Sufficiency of the Evidence

¶ 39 Defendant first argues that the State failed to prove beyond a reasonable doubt that defendant possessed a firearm or pointed one at a police officer. Specifically, defendant argues that he was not proven guilty beyond a reasonable doubt because "the State's case rested wholly on testimony that was improbable, unconvincing, and contrary to human experience." Viewing the facts and circumstances in the light most favorable to the State, we find the evidence sufficient to find defendant guilty of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and aggravated assault (720 ILCS 5/12-2(a)(6) (West 2010)).

¶ 40 In order to be convicted of unlawful use of a weapon by a felon, the State had to prove that defendant knowingly possessed a firearm and had been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2010). To be convicted of aggravated assault, defendant would have had to: (1) know that the individual assaulted was a peace officer; and (2) discharge a firearm in the direction of that peace officer. 720 ILCS 5/12-2(a)(6) (West 2010).

¶ 41 When considering a challenge to the sufficiency of the evidence, the reviewing court must determine, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A criminal conviction will only be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is not the function of this court to retry the defendant, nor will this court substitute its judgment for that of the trier of fact

on questions involving the weight of the evidence, the credibility of the witnesses, or the reasonable inferences to be drawn from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 42 Here, Staford testified that a CAD report had shown that the Joliet police department was looking for a vehicle that had a possible gun. Staford pulled over defendant in a vehicle matching the description of the one on the report with the reported license plate number. When defendant evaded Staford, Staford followed defendant to a residence where defendant exited the car and ran. Staford asked defendant to stop and identified himself as a police officer. Staford then saw defendant with a gun in his hand and saw defendant discharge that gun. Significantly, the trial court found Staford to be a credible witness. Staford's testimony alone was, therefore, sufficient to find defendant guilty of unlawful use of a weapon by a felon and aggravated assault.

¶ 43 Defendant attempts to challenge the trial court's credibility finding by calling attention to the following facts: (1) Staford did not report that he was shot at for several days after the incident; (2) Reid did not go back to the house with Staford to have Staford point out where defendant's bullet hit the ground; (3) the State did not charge defendant with a more serious offense; (4) Staford contradicted himself on how he prepared for trial; and (5) Staford had been previously disciplined at work.

¶ 44 The above points cited by defendant do not render Staford's testimony so improbable as to raise a reasonable doubt of defendant's guilt. We emphasize that the only two people who witnessed the incident were defendant and Staford, and the trial court had the opportunity to observe them both while they testified. It was the responsibility of the court to resolve any inconsistencies in the testimony and determine the weight to be given. *Id.* The court itself viewed Staford's testimony with a skeptical eye, stating:

> "I was prepared not to believe Officer Stafford [*sic*] based upon all the pretrial motions and all that stuff. But I sat here and watched him and listened to him with a jaded eye. And I ruled the way I did because it was credibility. *** I found him, despite it all in the manner and way that he testified, how he testified, how he answered the questions, how he conducted himself under your—the State's direct examination, cross-examination—that's how it was. It wasn't—I wasn't feeling pressure, you know, like you started to say. Like I said, he started a little bit behind the eight ball right from the start. But it was credibility. I found him, based upon it all, to be credible."

Despite the skeptical eye with which the court viewed Staford's testimony, it still found him credible. We will not substitute our judgment for that of the trial court on questions involving the credibility of a witness. *Id.*

¶ 45 II. VCVA Fine

¶ 46 Defendant next contends that the VCVA fine should be reduced from $100 to $12 as he had a right to be sentenced under the law in effect at the time of sentencing or at the time the offense occurred. He admits that the argument is forfeited as he did not object to the fine at sentencing or in his motion to reconsider the sentence, but he asks that we consider the claim under either ineffective assistance of counsel or plain error. Upon review, we find defense counsel performed deficiently by failing to object to the improper VCVA fine and failing to raise it in his motion to reconsider sentence. We further find that defendant was prejudiced by this error, as he would have been subject to a lesser fine.

¶ 47 To succeed on a claim for ineffective assistance of counsel, a defendant must show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-96 (1984).

¶ 48 We first determine whether counsel's performance fell below an objective standard of reasonableness. A defendant has a right to be sentenced under either the law in effect at the time of the offense or at the time of sentencing and must be advised of that right. *People v. Hollins*, 51 Ill. 2d 68, 71 (1972) ("Petitioner, however, was entitled to be sentenced under either the law in effect at the time the offense was committed or that in effect at the time of sentencing (*People v. James*, 46 Ill. 2d 71 (1970)), and the record fails to show that he was advised of his right to, or permitted to, make the choice.").

¶ 49 At the time defendant was sentenced, the VCVA fine was a flat fine of $100 for a felony, which is the fine that was assessed in defendant's case. 725 ILCS 240/10(b)(1) (West 2012). However, at the time of the offense, the VCVA fine was "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010). The fines that were imposed on defendant were as follows: $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2010)), $50 court systems fine (55 ILCS 5/5-1101(c)(1) (West 2010)), $5 drug court fine (55 ILCS 5/5-1101(f) (West 2010)), and a $10 specialized court fine (55 ILCS 5/5-1101(d) (West 2010)).[1] See *People v. Johnson*, 2015 IL App (3d) 140364 (appendix); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010); *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17-18. The fines imposed on defendant totaled $95. Under the 2010 version of the VCVA fine, defendant would have been fined $4 for every $40 of his fines, for a VCVA fine of $12. See 725 ILCS 240/10(b) (West 2010). This is significantly less than the $100 fine defendant received under the statute at the

[1]We note that the amount of each of these fines was the same at the time of the offense and the time of sentencing in this case, and therefore, defendant's choice in sentencing under either statute would have no affect on the amounts. We cite to the 2010 versions of the statutes as defendant argues he should have been sentenced as such.

time of sentencing. There is no reasonable explanation why defense counsel would endorse, rather than object to, the court's imposition of a $100 fine instead of a $12 fine. Counsel's failure to object to the use of the law in effect at the time of sentencing and failure to include such in the motion to reconsider sentence was objectively unreasonable.

¶ 50 We now turn to the second prong of *Strickland*: whether defendant was prejudiced by counsel's deficient performance. As defendant was subjected to a fine that was much higher than what would have been imposed had counsel brought the matter to the court's attention, we find that defendant was prejudiced by counsel's deficient performance. As such, we find defendant's VCVA fine should be reduced from $100 to $12. Because we find that defense counsel was ineffective, we need not consider plain error.

¶ 51 In coming to this conclusion, we reject the State's argument that defendant is barred from raising this issue under *People v. Castleberry*, 2015 IL 116916, which abolished the void sentence rule. Defendant does not rely on the void sentence rule in making this argument, and we need not consider the question of whether or not defendant's VCVA fine was void. *Brzowski v. Brzowski*, 2014 IL App (3d) 130404, ¶ 21 ("[B]ecause this is a direct appeal and not a collateral attack on the order, deciding whether [the] order was void is unnecessary to the resolution of this case.").

¶ 52 III. Presentence Custody Credit

¶ 53 Defendant next contends that he is entitled to $5 credit for his presentence custody. Though not actually conceding the matter, the State does not dispute that defendant is entitled to such credit. We find that defendant is entitled to $5-per-day credit for 769 days' presentence custody.

¶ 54 "Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant." 725 ILCS 5/110-14(a) (West 2010). A defendant may raise this issue for the first time on direct appeal. *People v. Woodard*, 175 Ill. 2d 435, 457 (1997).

¶ 55 Here, when defendant was sentenced, the State specifically stated that defendant had credit for 769 days served, which the court ordered. However, he did not receive the monetary credit for those days served to which he was entitled. Therefore, we award defendant the $5 credit for his presentence custody. As the VCVA fine is not eligible for presentence custody credit (See *Johnson*, 2015 IL App (3d) 140364 (appendix)), defendant's fines totaled $95, as set out above. See *supra* ¶ 49. Based on defendant's presentence custody credit, defendant's fines will be reduced to zero.

¶ 56 IV. Collection Fee

¶ 57 Next, defendant argues that the $197 collection fee imposed on him by the circuit clerk should be vacated because the trial court did not set a deadline for paying his fines and fees. We agree as the trial court's failure to set a payment deadline renders the collection fee void.

¶ 58 Section 5-9-3(e) of the Unified Code of Corrections (Code) provides, in relevant part:

> "An additional fee of 30% of the delinquent amount is to be charged to the offender for any amount of the fine, fee, cost, restitution, or judgment of bond forfeiture or installment of the fine, fee, cost, restitution, or judgment of bond forfeiture that remains unpaid *after the time fixed for payment* of the fine, fee, cost, restitution, or judgment of bond forfeiture by the court." (Emphasis added.) 730 ILCS 5/5-9-3(e) (West 2010).

¶ 59 In *People v. Jones*, 2015 IL App (3d) 130601, ¶ 7, the defendant argued that the collection fee imposed by the circuit clerk pursuant to section 5-9-3(e) of the Code was improper because the trial court did not set a date for payment of his restitution. We held that the circuit clerk's imposition of the collection fee was void because it was unauthorized by section 5-9-3(e) of the Code in the absence of a date for payment set by the trial court. *Id.* ¶¶ 10-11. Like in *Jones*, the trial court, here, set no date for payment of the fines and fees imposed on defendant, either in his oral pronouncement or on the criminal cost sheet included with the sentencing order. Therefore, the circuit clerk was not permitted to assess a collection fee under section 5-9-3(e) of the Code. See *id.* Because the collection fees were not authorized under section 5-9-3(e) of the Code, they are void and subject to attack at any time or in any court. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14.

¶ 60 In coming to this conclusion, we again reject the State's argument that defendant is barred from raising this issue under *Castleberry*, 2015 IL 116916. In *Castleberry*, the Illinois Supreme Court abolished the void sentence rule stating, " 'a circuit court is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority.' " *Id.* ¶ 19 (quoting *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 530 (2001)). Therefore, " 'because circuit court jurisdiction is granted by the constitution, it cannot be the case that the failure to satisfy a certain statutory requirement or prerequisite can deprive the circuit court of its "power" or jurisdiction to hear a cause of action.' " *Id.* ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 30, citing *Steinbrecher*, 197 Ill. 2d at 529-32).

¶ 61 Though trial courts have general jurisdiction, circuit *clerks* do not. Circuit clerks do not have jurisdiction, as the clerk is a nonjudicial member of the court and "purely a ministerial officer." *People v. Tarbill*, 142 Ill. App. 3d 1060, 1061 (1986). Circuit clerks do have the power

under statute to impose fees (*People v. Smith*, 2014 IL App (4th) 121118, ¶ 18), but they do not have the power to impose fees that do not conform to the statutory requirements. *Gutierrez*, 2012 IL 111590, ¶ 14. Therefore, *Castleberry* does not apply to the unauthorized actions of a circuit clerk.

¶ 62 V. Interest Fee

¶ 63 Lastly, defendant argues that the $18 interest charge imposed by the circuit clerk was also unauthorized because the trial court did not set a payment deadline. Because it is not clear from the record that the interest charged was improperly imposed under section 5-9-3(e) of the Code, we find defendant has failed to meet his burden of establishing that these assessments were unauthorized.

¶ 64 Section 5-9-3(e) of the Code states, in pertinent part, "A default in payment of a fine, fee, cost, restitution, or judgment of bond forfeiture shall draw interest at the rate of 9% per annum." 730 ILCS 5/5-9-3(e) (West 2010).

¶ 65 It is unclear from the record whether the interest fee was imposed under section 5-9-3(e) of the Code. The only place the interest fee is shown in the record is on one printout from the clerk's website stating, "INTEREST 121 DAYS" and assessing an $18 charge. The printout does not state which statutory section the interest charge was imposed under. Moreover, the $18 interest charge does not appear to be assessed at the rate of 9% per annum, as provided under section 5-9-3(e) of the Code.

¶ 66 Because it is unclear from the record that the interest charges were improperly imposed under section 5-9-3(e) of the Code, we find that defendant has failed to meet his burden of establishing that the interest charge was unauthorized. See *People v. Carter*, 2015 IL 117709, ¶ 19 ("[T]o support a claim of error, the appellant *** has the burden to present a sufficiently

complete record such that the court of review may determine whether there was the error claimed by the appellant."). We, therefore, do not vacate the interest charges.

¶ 67 CONCLUSION

¶ 68 In sum, we affirm defendant's conviction and remand for the trial court to modify his monetary assessments as follows: (1) reduce the $100 VCVA fine to $12; (2) award defendant $5 presentence custody credit, thus reducing his $95 fines to zero; (3) vacate the $197 collection fee; and (4) affirm the $18 interest charge. Therefore, the amount due and owing from defendant will be reduced from the $874 listed on the printout from the clerk's website to $494.

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

¶ 70 Affirmed in part and vacated in part.

¶ 71 Cause remanded with directions.