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2016 IL App (3d) 140452-U

Order filed June 27, 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 Nos. 3-14-0452, 3-14-0453, and 3-14-0454
)	Circuit Nos. 12-CF-170, 12-CF-718, and 12-CF-1720
ELIJAH MANUEL,)	Honorable Daniel J. Rozak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Schmidt specially concurred.
Justice Wright dissented.

ORDER

¶ 1 *Held:* Collection fees imposed by the circuit clerk were not authorized by statute and therefore were void. Defendant failed to establish that interest fees imposed by the circuit clerk were unauthorized.

¶ 2 Defendant, Elijah Manuel, argues on appeal from the denial of several *nunc pro tunc* motions that collection and interest fees assessed against him by the circuit clerk were void

because the circuit court did not set a due date for payment of his monetary assessments. We vacate the collection fees, and otherwise affirm the judgment.

¶ 3

FACTS

¶ 4

The present appeal involves three consolidated criminal cases. In the first case (armed robbery case), defendant was charged with seven counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)); five counts of aggravated robbery (720 ILCS 5/18-5(a) (West 2010)); one count of attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2010)); one count of attempted aggravated robbery (720 ILCS 5/8-4(a), 18-5(a) (West 2010)); and one count of aggravated battery (720 ILCS 5/12-3.05(c) (West 2010)). In the second case (aggravated driving while under the influence of alcohol (DUI) case), defendant was charged with two counts of aggravated DUI (625 ILCS 5/11-501(a)(5), (a)(6), (d)(1)(H) (West 2010)). In the third case (home invasion case), defendant was charged with three counts of home invasion (720 ILCS 5/12-11(a)(1), (a)(2), (a)(3) (West 2010)); one count of residential burglary (720 ILCS 5/19-3(a) (West 2010)); and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2010)).

¶ 5

Defendant entered into a negotiated plea agreement that disposed of all three cases in which defendant pled guilty to three counts of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)); one count of attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2010)); one count of aggravated DUI (625 ILCS 5/11-501(a)(5), (d)(1)(H) (West 2010)), and one count of home invasion (720 ILCS 5/12-11(a)(2) (West 2010)). In exchange, the State agreed to seek 17-year sentences on the most serious charges and lesser sentences on the other charges, all to be served concurrently. The State also agreed to dismiss the remaining charges against defendant. Defendant agreed to costs, which had been calculated in advance on cost sheets. Pursuant to the

cost sheets, defendant owed \$472 in the home invasion case, \$592 in the armed robbery case and did not owe any costs in the aggravated DUI case. The circuit court signed the cost sheets. On June 28, 2013, the circuit court accepted defendant's plea, sentenced defendant according to the State's recommendation, and entered judgments for costs in the armed robbery and home invasion cases. Defendant did not file a timely postplea motion or appeal his conviction.

¶ 6 The docket sheets show that the home invasion and armed robbery cases were sent to collections on December 17, 2013. At that time, the docket sheets stated defendant had balances of \$631 and \$789 for his home invasion and armed robbery cases, respectively. On February 21, 2014, the circuit court ordered that bond posted in a separate case be applied to partially cover costs in the home invasion and armed robbery cases.

¶ 7 On May 7, 2014, defendant filed identical motions for *nunc pro tunc* orders in each of his three cases. In the motions, defendant argued that the mittimus did not accurately reflect the amount of time he spent in custody prior to sentencing. The circuit court denied defendant's motions, finding that the mittimus in each case was correct. Defendant filed a notice of appeal.

¶ 8 Printouts from the circuit clerk's Web Site stating the fines and fees owing in defendant's cases appear in the records. In defendant's home invasion case, the printout showed a collection fee of \$141 and an interest charge of \$18, in addition to the \$472 in costs ordered by the court. In defendant's armed robbery case, a collection fee of \$177 and an interest charge of \$20 appeared on the printout, in addition to the \$592 in costs ordered by the court.

¶ 9 At the end of each docket sheet, there is a chart entitled "Summary of Entries with Amounts." In defendant's armed robbery case, the chart has an entry entitled "Case Interest Calculation 172 Days At 15% Of 135.00." In defendant's home invasion case, there is an entry entitled "Case Interest Calculation 172 Days At 15% Of 125.00."

¶ 10

ANALYSIS

¶ 11

On appeal, defendant argues that the collection and interest fees imposed by the circuit clerk are not authorized by section 5-9-3(e) of the Unified Code of Corrections (Code) (730 ILCS 5/5-9-3(e) (West 2012)) because the circuit court did not set a due date for payment of his monetary assessments and therefore are void. We find: (1) the circuit clerk had no authority to impose the collection fees because no due date for payment was set by the circuit court; and (2) defendant failed to establish that the interest fees were unauthorized.

¶ 12

I. Collection Fees

¶ 13

First, defendant contends that the collection fees imposed by the circuit court were unauthorized by section 5-9-3(e) of the Code (*id.*) and therefore are void. Section 5-9-3(e), which concerns a defendant's default in payment of fines or costs, 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.)

Id.

¶ 14

The defendant in *People v. Jones*, 2015 IL App (3d) 130601, ¶ 7, like in the instant case, argued that a collection fee imposed by the circuit clerk pursuant to section 5-9-3(e) of the Code was improper because the circuit court did not set a deadline for his payment of 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 payment deadline fixed by the circuit court. *Id.* ¶¶ 10-11. In the instant case, like in *Jones*, the circuit court set no deadline for payment of

defendant's outstanding costs. Consequently, the collection fees assessed by the clerk were not permitted by section 5-9-3(e) of the Code. See *id.* Because the collection fees imposed by the clerk in the instant case were unauthorized, they are void and subject to attack at any time or in any court. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14 (holding that a public defender fee imposed by the circuit clerk was void where the statute provided that such a fee could only be imposed by the circuit court after a hearing).

¶ 15 We reject the State's argument that the collection fees may not be attacked as void because the void sentencing rule was abrogated by our supreme court in *People v. Castleberry*, 2015 IL 116916. In *Castleberry*, the court abolished the void sentencing rule on the basis that " '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)). That is, " '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 539-32).

¶ 16 Unlike circuit *courts*, circuit *clerks* do not have general jurisdiction conferred by the State constitution; they do not have "jurisdiction" at all. Rather, the clerk is a nonjudicial member of the court and is "purely a ministerial officer." *People v. Tarbill*, 142 Ill. App. 3d 1060, 1061 (1986); see also *Drury v. County of McLean*, 89 Ill. 2d 417, 424 (1982). While circuit clerks can have statutory authority to impose fees (*People v. Smith*, 2014 IL App (4th) 121118, ¶ 18), they are powerless to impose fees that do not conform with statutory requirements. See *Gutierrez*, 2012 IL 111590, ¶ 14. Thus, *Castleberry's* holding has no applicability to unauthorized actions of a circuit clerk.

¶ 17 II. Interest Fees

¶ 18 Additionally, defendant argues that the interest charges imposed by the circuit clerk, like the collection fees, was assessed pursuant to section 5-9-3(e) of the Code and therefore were unauthorized because the circuit court did not set a payment due date. Section 5-9-3(e) provides: "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 2012).

¶ 19 It is not clear from the record that the interest charges that appear on the printouts from the clerk's Web Site were imposed under section 5-9-3(e) of the Code. The printouts from the Web Site do not contain any indication of what statutory section the interest charges were imposed under. Additionally, the \$18 interest charge in defendant's home invasion case and the \$20 interest charge in defendant's armed robbery case do not appear to be assessed at the rate of 9% per annum, as provided in section 5-9-3(e) of the Code.

¶ 20 Rather, the docket sheet indicates that the \$20 interest charge in the armed robbery case was calculated at the rate of 15% of \$135, and the \$18 interest charge in the home invasion case was calculated at 15% of \$125. We note, however, that section 124A-10 of the Code of Criminal Procedure of 2012 (725 ILCS 5/124A-10 (West 2012)) allows the circuit clerk, in the absence of a court-ordered payment schedule, to add a "delinquency amount " of 15% of unpaid fines, costs, fees, and penalties that remain unpaid after 90 days. *Id.* While the basis for the figures of \$135 in the armed robbery case and \$125 in the home invasion case is unclear from this record, it is possible that the 15% interest charges were properly imposed under section 124A-10.

¶ 21 Because it is not clear based on this 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 these assessments were 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."). Therefore, we do not vacate the interest charges.

¶ 22 CONCLUSION

¶ 23 The collection fees imposed by the circuit clerk are vacated. The judgment of the circuit court of Will County is otherwise affirmed.

¶ 24 Affirmed in part and vacated in part.

¶ 25 JUSTICE SCHMIDT, specially concurring.

¶ 26 I concur in the judgment.

¶ 27 JUSTICE WRIGHT, dissenting.

¶ 28 I respectfully dissent. First, my review of the defense motion for an order *nunc pro tunc*, filed by defendant on May 17, 2014, causes me to conclude defendant does not challenge any of the fines and costs ordered by the court. Those amounts total \$472 in case No. 12-CF-1720 and \$592 in case No. 12-CF-170. The court ordered these amounts to be reduced to judgment in each case on June 28, 2013. Any errors in the financial component of defendant's sentence as ordered on June 28, 2013, have been forfeited since the trial court had jurisdiction to impose the sentence in 2013. See *People v. Castleberry*, 2015 IL 116916, ¶¶ 15-18. It does not appear defendant takes issue with the totals discussed above.

¶ 29 On appeal, defendant attempts to challenge the collection costs and interest charges which the circuit clerk added after 2013. These contested amounts were not court ordered or brought to the trial court's attention at the time of the request for a *nunc pro tunc* order. Consequently, I would dismiss the appeal.

¶ 30 The dismissal of this appeal does not leave defendant without a remedy for the purported erroneous interest charges and/or collection costs added by the circuit clerk after final judgment. The State's Attorney has the sole authority to initiate supplementary proceedings to collect any unpaid fines, costs, and fees. See 55 ILCS 5/4-2004 (West 2012). To date, the prosecution has not attempted to collect the financial penalties as ordered in 2013. *If* the State seeks to initiate collection proceedings, *then* defendant may contest unwarranted interest charges and collection costs as a defense to the supplementary collection proceedings.

¶ 31 Respectfully, in the absence of an agreement between the parties and the circuit clerk, I observe that neither this court nor the circuit court can compel another elected official, the circuit clerk, to remove collection costs and interest charges the circuit clerk assessed. A *mandamus* action directed against the circuit clerk is the appropriate avenue available to compel the circuit clerk to remove those monetary amounts added after 2013. Defendant has not elected to pursue an order of *mandamus*.

¶ 32 I strongly dissent because this decision will establish new precedent that will generate countless new appeals seeking to correct the purported errors of the circuit clerk, perhaps going back decades, which have not been approved or ordered by the trial court. It is not the duty of our reviewing courts to audit the circuit clerk's work. Respectfully, our review is confined to the work of the circuit judge. In this case, the circuit judge did not impose either interest charges or collection costs.