

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).

2016 IL App (4th) 140263-U

NO. 4-14-0263

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 24, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DANIEL SKILLINGS,)	No. 13CF710
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* Duplicate fines and fees, fines entered by the circuit clerk, and the crime stoppers assessment were improperly imposed. The improperly entered charges are vacated and the cause is remanded to determine the proper fines to be imposed by the trial court.
- ¶ 2 In August 2013, defendant, Daniel Skillings, pursuant to a partially negotiated plea, pleaded guilty to unlawful possession of a stolen motor vehicle (count II) (625 ILCS 5/4-103(a)(1) (West 2012)) and aggravated driving with a blood-alcohol concentration (BAC) of 0.08 or more (count III) (625 ILCS 5/11-501(a)(1), (d)(1)(H) (West 2012)) for an alleged vehicle theft on May 5, 2013.
- ¶ 3 In October 2013, the trial court sentenced defendant to concurrent sentences of three years in prison for count II and three years in prison for count III. Defendant appealed. This court remanded the case with directions to provide proper admonishments to defendant.

People v. Skillings, No. 4-13-1047 (Feb. 25, 2014). The trial court gave defendant proper admonishments. This appeal followed.

¶ 4

I. BACKGROUND

¶ 5 On May 6, 2013, defendant was arrested after an alleged burglary and stolen vehicle were reported. A police officer attempted to pull defendant's vehicle over. Defendant pulled into a residence, struck the car in the driveway, and officers commanded him to exit the vehicle. Defendant admitted drinking approximately 20 beers. His BAC was 0.169. Defendant admitted taking the truck from a University of Illinois facility.

¶ 6 On May 6, 2013, the State charged defendant with residential burglary (count I) (720 ILCS 5/19-3 (West 2012)), unlawful possession of a stolen vehicle (count II) (625 ILCS 5/4-103(a)(1) (West 2012)), aggravated driving with a BAC of 0.08 or more (count III) (625 ILCS 5/11-501(a)(1), (d)(1)(H) (West 2012)), and aggravated driving under the influence of alcohol (count IV) (625 ILCS 5/11-501(a)(2), (d)(1)(H) (West 2012)). The State dropped counts I and IV and recommended a four-year sentence in exchange for defendant's guilty plea on counts II and III.

¶ 7 The trial court accepted defendant's pleas. It sentenced defendant to concurrent three-year prison sentences for count II, possession of a stolen vehicle, and count III, aggravated driving with a BAC of 0.08 or more. Prior to sentencing, the trial court considered a presentence report prepared by the probation office and defendant requested probation. Defendant received 165 days' and \$825 credit for time served. The trial court imposed the following fines with its sentence: (1) \$250 genetic marker grouping analysis fee; (2) \$750 minimum statutory fine; (3) \$100 Violent Crime Victims Assistance Act (VCVA) fee; and (4) \$10 anticrime fee.

¶ 8 The circuit clerk entered the fines and fees against defendant. The relevant assessments included the following: (1) two \$5 "document storage" fees; (2) two \$10

"automation" fees; (3) two \$100 "circuit clerk fee[s]"; (4) two \$25 "court security" fees; (5) a \$10 "crime stoppers" fee; (6) two \$30 juvenile-expungement assessments (each comprised of a \$10 "state police services" fee, \$10 of the \$40 "State's Attorney" fee, and a \$10 "clerk operations and administrative fund" assessment); (7) two \$10 "Arrestee's Medical" fees; (8) \$5 "Spinal Cord Research" fee; (9) two \$100 "Trauma fund" fees; (10) two \$5 "drug court program" fees; (11) two \$10 "State police operations" fees; (12) a \$35 serious traffic violation assessment (comprised of the \$15 "fire prevention fund," \$15 "fire truck fee," and \$5 "clerk operations and administrative fund" assessment); (13) two \$76 "driver's education" fees; (14) two \$190 "traffic/criminal surcharge" fees; (15) two \$50 "court finance" fees; (16) two \$10 "probation operations assessments"; and (17) two \$100 VCVA assessments. In all, defendant received 25 separate fines, fees, and costs.

¶ 9 Defendant filed a motion to reconsider his sentence. The trial court denied it. Defendant appealed to this court. We remanded this matter with directions for the trial court to properly admonish defendant pursuant to Supreme Court Rules 605(b) and (c). Ill. S. Ct. Rs. 605 (b), (c) (eff. Oct. 1, 2001). On remand, the trial court admonished defendant. Defendant renewed his motion to reconsider his sentence. The trial court denied defendant's motion. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues (1) the trial court improperly imposed duplicate fees against him, (2) the circuit clerk improperly entered fines against defendant, and (3) defendant is entitled to an \$825 credit toward any reimposed fines on remand. We agree and remand with directions.

¶ 12 A. Duplicate Fines and Fees

¶ 13 Defendant argues, and the State agrees, duplicate fees were imposed in error

against defendant on each count for the following: document storage, automation, court security, and the circuit clerk fee. We agree. In *Alghadi*, this court held document storage, automation, court security, and circuit clerk fees could each be imposed once per case. *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 22, 960 N.E.2d 612. We vacate each duplicate fee on count III. The vacated fees should not be reimposed on remand.

¶ 14 B. Crime Stoppers Fine

¶ 15 Defendant and the State both agree the \$10 crime stoppers charge is a fine and should not be reimposed against defendant. We agree. The crime stoppers assessment is a local anti-crime assessment under Unified Code of Corrections (730 ILCS 5/5-6-3(a)(12) (West 2014)) and Anti-Crime Advisory Council Act (20 ILCS 3910/5(a) (West 2014)). The Anti-Crime Fund charge is a fine. *People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 48, 23 N.E.3d 650. We note this fine can "be imposed only as a condition of probation." *Id.*; 730 ILCS 5/5-6-3(b)(13) (West 2012). Here, the crime stoppers fine was improperly imposed by the trial court. Defendant was sentenced to prison, not probation. We vacate this fine and it should not be imposed on remand.

¶ 16 C. Fines Entered by the Circuit Clerk

¶ 17 Defendant argues, and the State concedes, several fines were improperly imposed by the circuit clerk. Whether a charge is a fine or a fee is a matter of statutory construction, which we review *de novo*. *People v. Gutierrez*, 2012 IL 111590, ¶ 16, 962 N.E.2d 437. Fines and fees are two distinct charges. A fee is a charge designed to recoup the State's expenses, while a fine "is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." *People v. Smith*, 2014 IL App (4th) 121118, ¶ 20, 18 N.E.3d 912 (quoting *People v. Jones*, 223 Ill. 2d 569, 598, 861 N.E.2d 967, 984 (2006)). The circuit clerk can levy fees on a defendant, but only the trial court can impose fines on a defendant. *Id.* ¶ 18. Fines

imposed by the circuit clerk are imposed without authority. *Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437. Any clerk-imposed fines can be vacated and reimposed on remand by the trial court. *Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912.

¶ 18 *1. Juvenile Record Expungement Fine*

¶ 19 Defendant argues, and the State concedes, the juvenile record expungement fines were improperly imposed by the circuit clerk. We agree. A \$30 fine was imposed for both charges against defendant. Each fine is comprised of three separate assessments: the \$10 State Police Fund, \$10 for the State's Attorney's Office Fund (which is incorporated in the \$40 State's Attorney assessment), and the \$10 Circuit Clerk Operations and Administrative Fund. *Smith*, 2014 IL App (4th) 121118, ¶ 61, 18 N.E.3d 912; 730 ILCS 5/5-9-1.17 (West 2012) The juvenile expungement assessment is a fine. *Smith*, 2014 IL App (4th) 121118, ¶ 61, 18 N.E.3d 912. We vacate it on each count. On remand, it should be reimposed by the trial court on each count.

¶ 20 *2. Arrestee Medical Assessment*

¶ 21 Defendant argues, and the State concedes, the \$10 arrestee medical assessment was an improperly imposed fine on both counts. We agree. Despite being labeled a "fee," the arrestee medical assessment is a fine. *Id.* ¶ 46; 730 ILCS 125/17 (West 2012). The clerk cannot impose this fine. We vacate it on both counts and it should be reimposed by the trial court.

¶ 22 *3. Spinal Cord Research Assessment*

¶ 23 Defendant argues, and the State concedes, the \$5 spinal cord research assessment is a fine improperly imposed by the circuit clerk. We agree. This court previously determined the spinal cord research assessment was a fine. *People v. Graves*, 235 Ill. 2d 244, 251, 919 N.E.2d 906, 910 (2009); 730 ILCS 5-9-1(c-7) (West 2012). This fine was improperly imposed by the circuit clerk. We vacate it and the trial court should reimpose it on remand.

¶ 24 *4. Trauma Fund Assessment*

¶ 25 Defendant argues, and the State concedes, the \$100 trauma fund assessment is a fine and should only apply to count III. We agree. The trauma fund assessment is a fine and can only be imposed by the trial court. *Jones*, 223 Ill. 2d at 592, 861 N.E.2d at 981 (2006). The fine applies to "any person convicted***for driving under the influence of alcohol***." 730 ILCS 5/5-9-1(c-5) (West 2012). Here, defendant was charged and pleaded guilty to unlawful possession of a stolen motor vehicle (count II) (625 ILCS 5/4-103(a)(1) (West 2012)) and aggravated driving with a BAC of 0.08 or more (count III) (625 ILCS 5/11-501(a)(1), (d)(1)(H) (West 2012)). Only count III falls under the statutory section on driving under the influence of alcohol (625 ILCS 5/11-501 (West 2012)). The trauma fund fine was imposed by the circuit clerk on both counts. We vacate both fines. On remand, the trial court should reimpose the fine for the conviction on count III.

¶ 26 *5. Drug Court Fine*

¶ 27 Defendant argues, and the State concedes, the \$5 drug court assessment was a fine improperly imposed by the circuit clerk on both counts. We agree. The drug court assessment is a fine when it is imposed on a conviction outside drug court. *Smith*, 2014 IL App (4th) 121118, ¶ 57, 18 N.E.3d 912; 55 ILCS 5/5-1101(f) (West 2012). Defendant was not convicted in drug court, making this assessment a fine. The circuit clerk improperly imposed this fine. We vacate it and the trial court should reimpose it on both counts.

¶ 28 *6. State Police Operations Fine*

¶ 29 Defendant argues, and the State concedes, the \$10 state police operations assessment is a fine improperly imposed by the circuit clerk. We agree. The state police operations fund was previously deemed a fine. *Smith*, 2014 IL App (4th) 121118, ¶ 61, 18 N.E.3d 912. The circuit clerk improperly imposed this fine and we vacate it. The trial court should reimpose it on remand.

¶ 30

7. Serious Traffic Violation Fine

¶ 31 Defendant argues and the State concedes the \$35 serious traffic violation assessment is a fine improperly imposed by the circuit clerk. We agree. The serious traffic violation assessment is composed of \$15 for the fire prevention fund, \$15 for the fire truck revolving loan fund, and \$5 for circuit clerk operations and administration (625 ILCS 5/16-104d (West 2012)). The serious traffic violation fee is a fine. *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 12, 979 N.E.2d 1023 (considering the serious traffic violation assessment as an applicable fine). Specifically, it is a fine because it is not designed to recover the expenses from prosecuting defendant. *Graves*, 235 Ill. 2d at 250, 919 N.E.2d at 909. Instead, it applies to fire related funds, which served no role in defendant's prosecution. The circuit clerk improperly imposed this fine and we vacate it. The trial court should reimpose the fine on remand.

¶ 32

8. Driver's Education Fine

¶ 33 Defendant argues, and the State concedes, the \$76 charge for the driver's education fund is a fine under both counts. We agree. The statute identifies this assessment as a fine (625 ILCS 5/16-104a (a) (West 2012)). Prior cases also address this assessment as a fine. *O'Laughlin*, 2012 IL App (4th) 110018, ¶ 14, 979 N.E.2d 1023; *Jones*, 223 Ill. 2d at 603, 861 N.E.2d at 987. The circuit clerk improperly imposed this fine. We vacate it and the trial court should reimpose it on both counts.

¶ 34

9. Traffic/Criminal Surcharge

¶ 35 Defendant argues and the State concedes the circuit clerk improperly imposed the \$190 traffic/criminal surcharge on both counts. We agree. In *Smith*, this court found the traffic/criminal surcharge was a fine. *Smith*, 2014 IL App (4th) 121118, ¶ 73, 18 N.E.3d 912; 730 ILCS 5/5-9-1(c) (West 2012). We vacate this fine and the trial court should reimpose it on both counts.

¶ 36

10. *Court Finance Fee*

¶ 37 Defendant argues and the State concedes the \$50 court finance fee is actually a fine and was improperly imposed by the circuit clerk on each count. We agree. The court finance fee was previously deemed a fine. *Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912; 55 ILCS 5/5-1101 (c)(1) (West 2012). We vacate this fine. The trial court should reimpose it on remand on both counts.

¶ 38

11. *Probation Operations Assistance Assessment*

¶ 39 Defendant argues the \$10 probation operations assistance assessment (705 ILCS 105/27.3a (1.1) (West 2012)) was a fine on both counts because the probation office did not assist in the prosecution and defendant was not sentenced to probation. The State argues the probation office helped prepare defendant's presentence investigation report and was therefore involved in the prosecution. Under the State's argument, the probation assessment is a fee properly imposed by the circuit clerk. Both parties rely on *People v. Rogers*, 2014 IL App (4th) 121088, 13 N.E.3d 1280, to argue the probation assessment was either a fine or a fee.

¶ 40

In *Rogers*, this court held whether the probation assessment is a fine or a fee depends on whether the probation office participates in the prosecution. *Id.* at ¶ 38, 13 N.E.3d 1280. Where the probation office participates in the prosecution, the probation assessment is a fee. *Id.* When the probation office is not involved in the prosecution, the probation assessment is a fine. *Id.*

¶ 41

The facts in *Rogers* are similar to the facts here. In that case, the defendant was eligible, and asked for, probation. *Id.* ¶ 37. The probation office was ordered to prepare a presentence investigation report as a result. *Id.* Although the defendant was sentenced to prison, the probation office's presentence report constituted participation in the prosecution. *Id.* The probation assessment was deemed a fee. *Id.* ¶ 39.

¶ 42 The present-case context of the probation assessment is identical to *Rogers*. Defendant asked for probation but was sentenced to prison. The trial court ordered and considered a presentence report prepared by the probation office. Under these facts, we find the probation assessment is a fee for both counts. It was properly imposed by the circuit clerk and will not be disturbed.

¶ 43 12. *Violent Crime Victims Assistance Fine*

¶ 44 Defendant argues, and the State concedes, the circuit clerk improperly imposed a \$100 VCVA fine on count II. We agree. The VCVA assessment was previously deemed a fine. *Alghadi*, 2011 IL App (4th) 100012, ¶ 17, 960 N.E.2d 612 (citing *People v. Long*, 398 Ill. App. 3d 1028, 1031-32, 924 N.E.2d 511, 514 (2010)); 725 ILCS 240/10(b) (West 2012). Here, the imposition of \$100 fines for counts II and III was based on the commission of felonies (725 ILCS 240/10 (b)(1) (West 2012)). The circuit clerk improperly imposed these fines. We vacate both fines and the trial court should reimpose both fines on remand.

¶ 45 The State also argues an additional \$50 fine should be imposed for the separate violation of the Illinois Vehicle Code (625 ILCS 5/1-100 to 60/99 (West 2012); 725 ILCS 240/10 (b)(2) (West 2012)) on each count. The Illinois Supreme Court recently abolished the void sentence rule. *People v. Castleberry*, 2015 IL 116916, ¶ 1, 43 N.E.3d 932. As part of its judgment, the supreme court determined appellate courts can reduce criminal sentences, but they cannot increase criminal sentences. *Id.* ¶ 24, 43 N.E.3d 932; see also Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967). Here, the State is asking this court to increase defendant's sentence by imposing an additional fine. We will not make any order with respect to imposing additional fines.

¶ 46 D. Defendant's Presentence Credit

¶ 47 Defendant argues, and the State concedes, defendant is entitled to \$825 available presentence credit toward any creditable fines reimposed on remand. We agree. Incarcerated

defendants on bailable offenses are entitled to \$5-per-day presentence credit up to the amount of any imposed fines (725 ILCS 5/110-14 (a) (West 2012)). At trial, defendant was credited with 165 days in custody. When multiplied by \$5 per day, defendant is entitled to \$825 in available presentence credit toward any creditable fines imposed on remand.

¶ 48

III. CONCLUSION

¶ 49 In sum, the duplicate fines, the crime stoppers fine, and the fines entered by the circuit clerk are vacated. On remand, we direct the trial court to reimpose the vacated fines entered by the circuit clerk and apply defendant's \$825 available presentence credit against any creditable fines imposed. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. Last, we note the continued "piling on" of court fees and assessments authorized by the legislature. Here, defendant received 25 separate assessments. The time and resources consumed in trying to accurately impose and collect the myriad of additional assessments from defendants, most of whom are impoverished, is staggering.

¶ 50 Affirmed in part and vacated in part. Cause remanded with directions.