

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) 140688-U

NO. 4-14-0688

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 17, 2016
Carla Bender
4th District Appellate
Court, IL

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| WILLIAM D. WASHINGTON, |) | No. 11CF120 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Heidi N. Ladd, |
| |) | Judge Presiding. |

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

ORDER

¶ 1 *Held:* We vacate clerk-imposed fines and remand the case to reimpose the applicable fines. Defendant is entitled to \$890 in presentence credit toward his creditable fines.

¶ 2 In January 2011, the State charged defendant, William D. Washington, with burglary (count I) (720 ILCS 5/19-1(a) (West 2010)). In March 2011, the State charged him with theft with a prior burglary conviction (count II) (720 ILCS 5/16-1(a)(1), (b)(2) (West 2010)). Defendant pleaded guilty to count II in exchange for the State's dismissal of count I. The trial court sentenced defendant to 30 months of probation.

¶ 3 In October 2013, the State filed a petition to revoke defendant's probation for failure to abstain from drug use and cooperate with a court-ordered program. In March 2014, the circuit court held a hearing on the petition to revoke defendant's probation. The court found defendant violated his probation and in May 2014 resentenced him to six years in prison. This

appeal followed.

¶ 4

I. BACKGROUND

¶ 5 On January 21, 2011, the State charged defendant with burglary (count I) (720 ILCS 5/19-1(a) (West 2010)). At his arraignment, he waived his preliminary hearing on the charge and pleaded not guilty. On March 14, 2011, prior to trial, the State charged defendant with theft with a prior burglary conviction based on a prior burglary conviction in 1998 (720 ILCS 5/16-1(a)(1), (b)(2) (West 2010)). The second charge was set for a preliminary hearing the same day. Later that day, defendant pleaded guilty to count II in exchange for the State's dismissal of count I. Defendant never had a preliminary hearing on either count. On May 5, 2011, the circuit court sentenced defendant to 30 months of probation. The court ordered defendant to pay a (1) \$5 anti-crime fee, (2) \$25 probation fee for every month of probation (\$750 total), and (3) \$200 genetic marker analysis fee.

¶ 6

On October 21, 2013, the State filed a petition to revoke probation. In its petition, the State alleged defendant failed to abstain from drug use and was unsuccessfully discharged from a drug-treatment program. On May 14, 2014, after a hearing on the petition, defendant was resentenced to six years in prison. As part of his sentence, the circuit court required defendant to "pay all the outstanding financial obligations previously imposed, and any new ones incurred by these proceedings." The docket entries for May 14, 2014, summarize the hearing and sentence. One entry states "Cost Only Fee \$332.00" and contains the text "sentence: Fines and/or Cost/Penalties and Fees In force." Another reads "Disposition: Modified/Trial Court" and adds a \$10 preliminary hearing fee and a \$750 probation monitoring fee to defendant's fees for trial.

¶ 7

A document entitled "Criminal/Traffic Payment Setup" lists all applicable fines and fees in this case. The relevant assessments include the following: (1) \$50 court finance fee, (2) \$10 State Police operations fund, (3) \$10 preliminary hearing fee, and (4) \$30 juvenile record

expungement fine (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 (730 ILCS 5/5-9-1.17 (West 2010))). See *People v. Smith*, 2014 IL App (4th) 121118, ¶ 61, 18 N.E.3d 912. This appeal followed.

¶ 8

II. ANALYSIS

¶ 9 On appeal, defendant argues (1) the circuit clerk improperly entered fines against him, and (2) he is entitled to \$890 in presentence credit toward any recalculated fines on remand. We agree and remand with directions.

¶ 10

A. Fines and Fees Imposed by the Clerk

¶ 11 Defendant argues the circuit clerk improperly imposed fines against him. The State argues the record is insufficient to show the clerk imposed fines. We agree with defendant. Whether a charge is a fine or a fee is a matter of statutory construction, which we review *de novo*. *Id.* ¶ 21.

¶ 12

The State relies on *People v. Carter*, 2015 IL 117709, 43 N.E.3d 972, to argue the record on appeal is insufficient to establish the clerk imposed fines against defendant. We disagree. In *Carter*, the circuit court never addressed the defendant's argument. *Id.* ¶ 20. A single statement on one document was the entire record supporting the defendant's claim. *Id.* The record in this case includes docket entries, an enumerated list of fines and fees, and a transcript of every sentencing proceeding. The record on appeal supports defendant's contention.

¶ 13

The State argues two of the docket entries, entitled "Disposition: Modified/Trial Court" and "Cost Only Fee \$332.00," suggest the trial court entered fines at those junctures and not the court clerk. We disagree. The "Cost Only Fee \$332.00" docket entry recounts defendant's sentencing hearing on May 14, 2014. It does not list any specific fines as part of the

sentence. The "Disposition: Modified/Trial Court" entry specifically modifies a *fee* and adds the \$10 preliminary hearing fee and the \$750 probation monitoring fee. Neither of these entries suggests any fines were imposed by the judge.

¶ 14 The State goes on to argue the fines imposed reflect clerical errors and should be corrected through a *nunc pro tunc* order. We disagree. A court clerk may enter a fee against a defendant, which is designed to recoup State expenses in prosecuting the defendant. *Smith*, 2014 IL App (4th) 121118, ¶ 18, 20, 18 N.E.3d 912. A fine, on the other hand, is a pecuniary punishment and part of a criminal sentence. *People v. Graves*, 235 Ill. 2d 244, 250, 919 N.E.2d 906, 909 (2009). "[T]he pronouncement of the sentence is the judicial act which comprises the judgment of the court. The entry of the sentencing order is a ministerial act and is merely evidence of the sentence." *People v. Williams*, 97 Ill. 2d 252, 310, 454 N.E.2d 220, 248 (1983). Hence, a fine must be pronounced by the court as part of a criminal sentence. Fines imposed by the court clerk are a criminal sentence imposed without authority. *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437. As a result, a fine entered by the court clerk is more than a clerical error. *People v. Wos*, 395 Ill. 172, 176, 69 N.E.2d 858, 861 (1946) (noting a judicial error relates to a judge's decision and cannot be corrected by a *nunc pro tunc* order). We decline the invitation to treat clerk-imposed fines as clerical errors.

¶ 15 The circuit court, in defendant's May 5, 2011, sentencing hearing, stated the specific fines and fees applied to his sentence. At defendant's May 14, 2014, resentencing hearing, the court stated defendant must "pay all the outstanding financial obligations previously imposed." Other than those two hearings, no other fines were pronounced by the court. The written judgment-sentence order and the docket entries do not impose any specific fines. The circuit court did not impose any fines other than those mentioned at the May 5, 2011, sentencing hearing. The document, "Criminal/Traffic Payment Setup," was the only item in the record on

appeal listing the contested fines. We find these fines were imposed by the clerk, without authority, and address each in turn.

¶ 16 *1. Juvenile Record Expungement Fine*

¶ 17 Defendant argues the juvenile record expungement fine was improperly imposed by the court clerk. We agree. The \$30 juvenile record expungement 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 2010). The juvenile expungement assessment is a fine. *Smith*, 2014 IL App (4th) 121118, ¶ 61, 18 N.E.3d 912. We vacate this fine. On remand, the trial court should reimpose it.

¶ 18 *2. Court Finance Fee*

¶ 19 Defendant argues the \$50 court finance fee is actually a fine and was improperly imposed by the court clerk. We agree. The court finance fee was previously deemed a fine. *Id.* ¶ 54; 55 ILCS 5/5-1101 (c)(1) (West 2010). We vacate this fine. The trial court should reimpose it on remand.

¶ 20 *3. State Police Operations Fund*

¶ 21 Defendant argues the \$10 State Police operations assessment is a fine improperly imposed by the court clerk. We agree. The State Police operations assessment was previously deemed a fine. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030; see also 705 ILCS 105/27.3a (West 2010). The court clerk improperly imposed this fine and we vacate it. The trial court should reimpose it on remand.

¶ 22 *B. Preliminary Examination Hearing Fee*

¶ 23 Defendant argues, and the State concedes, the \$10 preliminary examination hearing fee was improperly imposed by the trial court and should be vacated. We agree. The

preliminary examination hearing fee applies to "preliminary examinations" for a defendant held on bail (55 ILCS 5/4-2002(a) (West 2010)). A "preliminary examination" is interpreted to mean a preliminary hearing. *People v. Smith*, 236 Ill. 2d 162, 170, 923 N.E.2d 259, 264 (2010). The fee is applicable only when a preliminary hearing is held. *Id.* at 174, 923 N.E.2d at 266.

Defendant waived his right to preliminary hearing on count I. Later, he pleaded guilty and waived a preliminary hearing on count II. Since no preliminary hearing occurred, the State cannot collect a fee for a preliminary hearing. We vacate this fee. It should not be reimposed on remand.

¶ 24 C. Defendant's Presentence Credit

¶ 25 Defendant argues, and the State concedes, defendant is entitled to \$890 in 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 2010)). At trial, defendant was credited with 178 days in custody. When multiplied by \$5 per day, defendant is entitled to \$890 in available presentence credit toward any creditable fines imposed on remand.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, we vacate the imposition of fines against defendant by the court clerk. We remand with directions for the circuit court to impose the juvenile expungement fine, the court finance fee, and the State Police operations fine. Defendant's presentence credit should be applied to creditable fines up to the value of the fines imposed on remand. We otherwise affirm.

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