

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).

FILED

October 24, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 141040-U

NO. 4-14-1040

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
JAMES E. GREGORY,)	No. 11CF581
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Restitution imposed by the circuit clerk following a civil judgment entered by the trial court was imposed without authority and is vacated. The request for remand to allow the trial court to impose restitution is denied.

¶ 2 In July 2011, the State charged defendant, James E. Gregory, with aggravated battery causing great bodily harm (count I) (720 ILCS 5/12-4(a) (West 2010)), aggravated battery with a deadly weapon (count II) (720 ILCS 5/12-4(b)(1) (West 2010)), attempt (first degree murder) (count III) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), and armed violence (count IV) (720 ILCS 5/33A-2(a) (West 2010)) based on an incident on July 4, 2011.

¶ 3 In April 2014, defendant entered a negotiated plea to count I in exchange for the dismissal of counts II through IV. The trial court sentenced defendant to 9 ½ years in prison and entered a civil judgment against him for \$28,879.66, the amount of money the victim's insurer paid for his medical expenses. Defendant filed a motion to reconsider his sentence, which the

trial court denied after it determined the civil judgment was proper.

¶ 4 Defendant appeals, asserting the clerk improperly imposed restitution against him when the trial court ordered entry of a civil judgment. We agree.

¶ 5 I. BACKGROUND

¶ 6 In July 2011, the State charged defendant with aggravated battery causing great bodily harm (count I) (720 ILCS 5/12-4(a) (West 2010)), aggravated battery with a deadly weapon (count II) (720 ILCS 5/12-4(b)(1) (West 2010)), attempt (first degree murder) (count III) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), and armed violence (count IV) (720 ILCS 5/33A-2(a) (West 2010)). All four counts were based upon allegations that defendant struck Edward Levya on the head with a baseball bat on July 4, 2011.

¶ 7 In April 2014, defendant, who was extended-term eligible, entered a negotiated plea to count I in exchange for the State's dismissal of the remaining counts. During defendant's sentencing hearing in July 2014, the trial court sentenced him to 9 ½ years' imprisonment, to be followed by one year of mandatory supervised release. In addition to time in custody, the prosecutor for the State stated it was "asking for a civil judgment to be paid back to Health Care and Family Services [(HCFS)] in the amount of \$28,879.66," the amount paid by HCFS for the victim's medical costs. The court granted the State's request, stating, "[t]here will be a civil judgment in the amount of \$28,879.66." Defendant raised no objection to the civil judgment at the time of sentencing. A docket entry dated the day of defendant's sentencing reflects "restitution in the amount of \$28,879.66 for the use of [HCFS]." A July 2014 document entitled "Court Ordered Payment" shows 15 different fines and fees owed by defendant, including \$28,879.66 in restitution.

¶ 8 Later in July 2014, defendant filed a motion to reconsider his sentence, in which

he moved to vacate his sentence and "the Order of Restitution in the amount of \$28,879.66." At a November 2014 hearing on defendant's motion to reconsider his sentence, defense counsel argued:

"This is not a personal injury case where there is an automatic subrogation lien. *** [T]his is a criminal case, and the rights of the victim as to restitution are by statute, and we argue, Your Honor, that it does not provide for restitution as a matter of law to an insurance company ***. ***

[T]he [c]ourt does not have authority to order restitution to be paid to an insurance company as a matter of law.

[T]he [c]ourt does have discretion to either award it or not award it, and we think, Your Honor, that the [c]ourt—if the [c]ourt does not deem it a violation of the law, it has to be a position of approximately \$29,000, and I would rely on the [c]ourt's discretion."

¶ 9 The prosecutor argued:

"The fact of the restitution issue [defendant challenges in his motion to reconsider], it was not restitution. The [c]ourt ordered a [c]ivil [j]udgment. If the insurance company wants to collect on that, then after he is out I assume [it will] need to take steps to collect that."

¶ 10 The trial court stated the following:

"Now, with regard to the [c]ivil [j]udgment or restitution,

normally, a criminal [d]efendant is allowed to oppose restitution and is given the opportunity to a hearing should they want one.

This case was different in the sense that it was granted by way of a [c]ivil [j]udgment as part of a sentencing hearing."

The court then took judicial notice of the victim's medical bills and denied defendant's motion to reconsider his sentence.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the circuit clerk improperly imposed restitution against him when the trial court ordered entry of a civil judgment. Defendant asks this court to vacate the restitution order without remanding to the trial court. The State argues the circuit clerk did not impose the restitution costs without authority. In the alternative, the State asserts that if this court finds the clerk did act without authority, we should vacate the civil judgment and remand the cause to allow the trial court to impose restitution in compliance with the restitution statute (730 ILCS 5/5-5-6 (West 2010)). We agree with defendant.

¶ 14 A. Forfeiture

¶ 15 As a preliminary matter, the State suggests defendant failed to raise the issue of whether the circuit clerk improperly imposed restitution in his motion to reconsider his sentence and thus forfeited his challenge on that issue. However, the State goes on to concede that if restitution was imposed by the circuit clerk, it is void and forfeiture would not apply. Thus, we must determine whether the restitution was imposed by the circuit clerk.

¶ 16 The State correctly notes instances in the record referring to restitution being imposed against defendant, but these instances conflict with the court's oral pronouncement at de-

fendant's sentencing hearing imposing a civil judgment. "The court's oral pronouncement of sentence controls over the written order." *People v. Moore*, 301 Ill. App. 3d 728, 735, 704 N.E.2d 80, 85 (1998). Also, at defendant's hearing on his motion to reconsider his sentence, the court took care to distinguish the court's entry of a civil judgment from an order for restitution. We therefore find the restitution was imposed by the circuit clerk. A void judgment is one entered without jurisdiction and can be challenged " 'at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)). Accordingly, this court has jurisdiction to address this issue for the first time on appeal.

¶ 17

B. Authority of the Clerk

¶ 18 In light of our finding that the clerk imposed the restitution, we must next determine whether the clerk had the authority to do so. Defendant argues the circuit clerk imposed restitution without authority, and therefore, the restitution must be vacated. The State argues the circuit clerk was not acting beyond its authority, but reflecting what it believed had been ordered by the trial court as is indicated in the docket entry.

¶ 19

Pursuant to the Illinois Constitution, circuit courts have original jurisdiction over all justiciable matters, except for certain limited matters reserved by the Illinois Supreme Court. Ill. Const. 1970, art. VI, §9. See *People v. Castleberry*, 2015 IL 116916, ¶ 18, 43 N.E.3d 932. The Illinois Constitution grants no such jurisdiction to the circuit clerk. "The clerk of the court is a nonjudicial member of the court, and as such, has no power to impose sentences." *People v. Scott*, 152 Ill. App. 3d 868, 873, 505 N.E.2d 42, 46 (1987). The restitution statute, which is contained in section 5-5-6 of the Unified Code of Corrections, authorizes courts to order restitution when a person has "received any injury to his or her person or damage to his or her real or per-

sonal property as a result of the criminal act of the defendant." 730 ILCS 5/5-5-6 (West 2010). According to the statute's text, "[t]he court may consider restitution an appropriate sentence to be imposed on each defendant convicted of an offense in addition to a sentence of imprisonment." The statute's plain text suggests restitution is akin to a fine in that it is "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *People v. Jones*, 223 Ill. 2d 569, 581, 861 N.E.2d 967, 975 (2006). Accordingly, restitution may only be imposed by the trial court. Thus, we vacate the restitution imposed by the circuit clerk.

¶ 20 C. Appropriateness of Remand

¶ 21 Defendant asks this court to vacate the restitution imposed by the clerk without remanding to the trial court. According to defendant, as the party who requested a civil judgment, the State cannot contend on appeal that the course of action was in error. *People v. Harvey*, 211 Ill. 2d 368, 385, 813 N.E.2d 181, 192 (2004). Defendant asks us to apply the rule of invited error and deny the State's request for remand. Defendant asserts the State's insistence below that the order was one for a civil judgment is inconsistent with their current position that the trial court should be allowed to impose restitution. Defendant further argues a remand to allow the trial court to impose restitution would be an impermissible increase in his sentence under *Castleberry*. The State argues "remand is necessary for the trial court to vacate the civil judgment and impose mandatory restitution in compliance with [730 ILCS 5/5-5-6 (West 2010)]." We agree that the State has changed its position.

¶ 22 As previously noted, during the proceedings below the State specifically asked for a civil judgment. When contesting defendant's motion to reconsider, the State reiterated its position that the State was not seeking restitution. In reliance on the State's representation that it did

not seek restitution, the trial court denied defendant the opportunity to oppose restitution and deprived him of a hearing. Clearly, this was an error invited by the State. We decline to allow the State to benefit from an alleged error it invited. In light of our resolution of this matter pursuant to the rule of invited error, we need not consider whether ordering remand to allow the trial court to impose restitution would be an impermissible increase in defendant's sentence under *Castleberry*.

¶ 23

III. CONCLUSION

¶ 24 We vacate the order for restitution imposed herein. We otherwise affirm defendant's conviction and sentence.

¶ 25 Affirmed in part and vacated in part.