

**NOTICE**

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2016 IL App (4th) 150125-U

NO. 4-15-0125

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 4, 2016

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

GEORGE R. McCANEY, JR.,

Defendant-Appellant.

) Appeal from  
) Circuit Court of  
) Champaign County  
) No. 12CF1800  
)  
) Honorable  
) John R. Kennedy,  
) Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.

Justices Holder White and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court is ordered to impose several fines improperly imposed by the circuit clerk and apply additional presentence custody credit.

¶ 2 In March 2013, the trial court accepted defendant's guilty plea to the offense of aggravated driving under the influence of alcohol (DUI), a Class 4 felony (625 ILCS 5/11-501(d)(1)(H) (West 2012)). On April 17, 2013, the court sentenced defendant. Defendant appeals, arguing (1) his case should be remanded to the trial court for the court to impose certain fines improperly imposed by the circuit clerk, (2) his Crime Stopper's fine should be vacated, and (3) the trial court must properly apply his pretrial detention credit. The State concedes the case should be remanded for the trial court to impose certain fines. However, the State argues we should direct the trial court to impose additional mandatory fines. We remand with directions.

¶ 3

**I. BACKGROUND**

¶ 4 In November 2012, the State charged defendant by information with aggravated DUI (625 ILCS 5/11-501(d)(1)(H) (West 2012)). In March 2013, the trial court accepted defendant's guilty plea to the charged offense. On April 17, 2013, the court sentenced defendant to 63 months in prison with credit for 163 days previously served. The court also imposed a \$750 fine, a \$10 Crime Stoppers assessment, and an undetermined Violent Crime Victims Assistance Act (VCVA) fine. The court noted defendant was to receive \$815 in credit toward his fines for the 163 days he spent in custody. Other fines and fees were imposed by the circuit clerk.

¶ 5 On April 22, 2013, defendant filed a motion to reconsider his sentence. In June 2013, the trial court denied defendant's motion.

¶ 6 On November 25, 2014, this court remanded the case to the trial court because of an Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) compliance issue. *People v. McCaney*, 2014 IL App (4th) 130567-U. On remand, the trial court again denied defendant's motion to reconsider his sentence.

¶ 7 This appeal followed.

## ¶ 8 II. ANALYSIS

¶ 9 Defendant argues this case should be remanded to the trial court for the trial court to (1) impose the fines improperly imposed by the circuit clerk, (2) vacate the Crime Stopper's fine, and (3) ensure all of defendant's pretrial detention credit is applied. The State argues additional assessments should have been issued against defendant and requests we direct the court to impose these additional fines on remand.

¶ 10 The briefs in this appeal were filed before our supreme court issued its opinion in *People v. Castleberry*, 2015 IL 116916. In *Castleberry*, the court abolished the " 'void sentence

rule,' which state[d] that '[a] sentence which does not conform to a statutory requirement is void.' "

*Id.* ¶ 1. According to the supreme court, "recent decisions from this court have undermined the rationale behind the rule to the point that the rule can no longer be considered valid." *Id.* The supreme court noted:

"[O]ur cases have at times also held 'that the power to render the particular judgment or sentence is as important an element of jurisdiction as is personal jurisdiction and subject matter jurisdiction.' [Citation.] Based on this idea, the rule has developed which holds that a circuit court which violates a particular statutory requirement when imposing a sentence acts without 'inherent authority' or 'inherent power.' And, because the court has acted without power, it has acted without jurisdiction, thereby rendering the sentence void. Thus, the void sentence rule is stated: 'A sentence which does not conform to a statutory requirement is void.' [Citation.]" *Id.* ¶ 13.

The supreme court noted the Illinois Constitution granted circuit courts original jurisdiction over all justiciable matters. *Id.* ¶ 15. According to the court:

" '[W]hile the legislature can create new justiciable matters by enacting legislation that creates rights and duties, the failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction or constitute a nonwaivable condition precedent to the circuit court's jurisdiction.' "

*Id.* ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 37, 32 N.E.3d 553).

As a result, the supreme court abolished the void sentence rule, finding it constitutionally unsound because a circuit court, being a court of general jurisdiction, does not acquire its jurisdiction from any statute. *Castleberry*, 2015 IL 116916, ¶ 19.

¶ 11 After abolishing the void sentence rule, the supreme court noted Illinois Supreme Court Rule 604(a) (eff. Feb. 6, 2003) provides specific situations where the State may appeal in a criminal case. *Id.* ¶ 21. Rule 604 does not allow the State to appeal or cross-appeal a sentencing order. *Id.* While the State is free to raise any argument of record in support of the trial court's judgment, it cannot attack the sentencing order in any way with a view toward enlarging its own rights or lessening the rights of its adversary. *Castleberry*, 2015 IL 116916, ¶ 22 (citing *United States v. American Ry. Express Co.*, 265 U.S. 425, 435 (1924)). As a result, we will not address the State's argument this court should order the trial court to impose additional assessments on defendant.

¶ 12 A. Crime Stoppers Fine

¶ 13 Defendant first argues the \$10 Crime Stoppers fine must be vacated because he was not sentenced to supervision or probation. 730 ILCS 5/5-6-3(b)(12) (West 2012); 730 ILCS 5/5-6-3.1(c)(12), (13) (West 2012). The State concedes this fine lacked statutory authority. We accept the State's concession.

¶ 14 B. VCVA Fine and Court Finance Assessment

¶ 15 Defendant next argues his VCVA fine and court finance fee must be reduced on remand. The circuit clerk imposed a \$50 court finance fee. The trial court ordered defendant to pay the VCVA fine but did not set the amount of the fine. The circuit clerk set the VCVA

amount at \$100. The parties are in agreement this case must be remanded for the trial court to impose the VCVA fine, which was improperly imposed by the circuit clerk. While not addressed by the parties, we also note this court has held the court finance assessment also constitutes a fine. See *People v. Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912. As a result, the court must impose this fine on remand.

¶ 16 Defendant argues neither section 10 of the VCVA Act (725 ILCS 240/10(b) (West 2012)) nor section 5-1101 of the Counties Code (55 ILCS 5/5-1101(c) (West 2012)) address the situation in this case where the conviction at issue, aggravated DUI, is both a felony and a violation of the Illinois Vehicle Code (Vehicle Code). Defendants convicted of a felony are given higher VCVA and court finance assessments than individuals convicted of a Vehicle Code violation. Defendant argues these statutes are ambiguous and, therefore, the rule of lenity requires defendant be given the lower VCVA fine and court finance assessment, *i.e.*, the Vehicle Code assessment.

¶ 17 Defendant's argument presents an issue of statutory construction. Our supreme court recently stated:

"Our primary objective in construing a statutory scheme is to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. [Citation.] In the event there is ambiguity, the rule of lenity requires that it be resolved in a manner that favors the defendant; however, 'this rule must not be stretched so far as to defeat the legislature's intent.' [Citation.] In the course of statutory construction, we may

consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. We presume that the legislature did not intend to create absurd, inconvenient, or unjust results." *People v. Boyce*, 2015 IL 117108, ¶ 15, 27 N.E.3d 77.

We conclude defendant's argument he should receive the lower VCVA and court finance fines—*i.e.*, the Vehicle Code assessments—based on the rule of lenity would defeat the legislature's intent with regard to these fines.

¶ 18 Pursuant to the language of both section 10 of the VCVA Act (725 ILCS 240/10 (West 2012)) and section 5-1101 of the Counties Code (55 ILCS 5/5-1101 (West 2012)), the General Assembly clearly intended for both of these fines to be assessed based on the seriousness of the offense in question. As to the court finance fine, this court stated as much in *Smith*:

"[The court finance] assessment does not seek to compensate the State for any costs incurred as the result of prosecuting the defendant. Rather, '[a] defendant is charged a flat amount depending on the classification of the severity of his offense.'

[*People v. Smith*, 2013 IL App (2d) 120691, ¶ 21, 1 N.E.3d 648.]

\*\*\* [T]he amount of the assessment is correlated directly with the severity of the offense, demonstrating the punitive nature of the assessment. Although a 'felony is not necessarily twice as expensive to prosecute as a misdemeanor \* \* \* it is inherently more serious in the eyes of the law.' (Emphasis in original.)"

*Smith*, 2014 IL App (4th) 121118, ¶ 52, 18 N.E.3d 912 (quoting  
*Smith*, 2013 IL App (2d) 120691, ¶ 21, 1 N.E.3d 648).

The same is true with regard to the VCVA fine. As a result, we direct the trial court to impose these two fines at the felony level, \$100 for the VCVA fine (725 ILCS 240/10(b)(1) (West 2012)) and \$50 for the court finance fine (55 ILCS 5/5-1101(c)(1) (West 2012)).

¶ 19 The State argues multiple court finance and VCVA fines should be imposed by the trial court on remand, even though defendant was convicted of only one offense. However, as stated earlier, pursuant to *Castleberry*, we cannot order the trial court to impose additional fines on defendant. Further, because we need not address the State's argument to resolve this appeal, we will not do so.

¶ 20 C. Other Fines

¶ 21 Defendant also argues the circuit clerk improperly imposed other fines. Only the trial court may impose a fine. *People v. Warren*, 2014 IL App (4th) 120721, ¶ 171, 16 N.E.3d 13. Defendant argues the circuit clerk improperly imposed the following fines: \$10 arrestee's medical fine; \$5 spinal cord research fine; \$100 trauma fund fine; \$10 probation operations fine; \$5 drug court fine; \$35 serious traffic violation fine; \$10 State Police operations fine; and \$30 juvenile expungement fine. The State concedes these fines were improperly imposed by the circuit clerk and should be vacated and the case remanded for the trial court to impose those fines.

¶ 22 In addition, the State argues additional fines imposed by the circuit clerk should be vacated and imposed by the trial court, including the \$190 traffic/criminal surcharge and \$76 driver's education fine. We accept the State's concession and order the trial court to impose these

assessments. The State argues these fines must be recalculated on remand. However, pursuant to *Castleberry*, the State cannot ask this court to impose additional penalties on defendant.

¶ 23 In addition, the State argues the \$50 roadside memorial fund fine (730 ILCS 5/5-9-1.18 (West 2012)) and \$30 court system fine (55 ILCS 5/5-1101(a) (West 2012)), which were not imposed, should be imposed on remand. Pursuant to *Castleberry*, the State cannot ask this court to impose additional penalties on a defendant. Therefore, we will not make any orders with regard to these two fines.

¶ 24 D. Presentence Credit

¶ 25 The trial court ordered defendant to receive \$815 in presentence detention credit against his fines. Defendant notes the record shows his \$750 DUI fine and \$5 drug court fine were paid with his presentence detention credit. Defendant argues on remand the trial court should apply the remaining \$60 in available presentence credit against any of his remaining creditable fines. The State concedes this issue. We accept the State's concession and order the trial court to apply all of defendant's presentence credit to creditable fines.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we remand this case to the trial court to vacate the Crime Stoppers fine, vacate the fines improperly imposed by the circuit clerk, and impose the \$100 VCVA fine, \$50 court finance fine, \$10 arrestee's medical fine, \$5 spinal cord research fine, \$100 trauma fund fine, \$10 probation operations fine; \$5 drug court fine, \$35 serious traffic violation fine, \$10 State Police operations fine, \$30 juvenile expungement fine, \$190 traffic/criminal surcharge, and \$76 driver's education fine. Further, the trial court is ordered to apply defendant's presentence custody credit to any creditable fines.

¶ 28 Remanded with directions.