

NOTICE
Decision filed 02/22/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 130384-U

NO. 5-13-0384

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Saline County.
)	
v.)	No. 00-CF-277
)	
DANIEL G. HEDGER,)	Honorable
)	Mark H. Clarke,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because the circuit clerk lacks authority to impose fines, the fines imposed by the circuit clerk are vacated, and the matter is remanded for the circuit court to impose the required fines.
- ¶ 2 In April 2002, the defendant was convicted of the first-degree murder of his five-month-old daughter and sentenced to a term of natural life. On direct appeal, we vacated the sentence and remanded the cause to the circuit court for resentencing. *People v. Hedger*, No. 5-02-0652 (2004) (unpublished order under Supreme Court Rule 23). On remand, the circuit court resentenced the defendant to a 30-year term of imprisonment. The defendant did not pursue a direct appeal from that judgment. The defendant appeals

the dismissal of his petition for postjudgment relief. On appeal, he argues that several of the costs imposed by the circuit clerk's office are fines which the circuit clerk lacks authority to impose. He requests that this court vacate those fines, remand the cause to the circuit court with directions to properly calculate and impose fines and to award statutory credit against those fines for the time he spent in presentence incarceration. The State agrees. For the following reasons we vacate the imposition of fines and remand the cause with directions.

¶ 3

BACKGROUND

¶ 4 Following sentencing, the circuit court ordered the defendant to pay the costs of the proceeding. Subsequently, the circuit clerk imposed the following costs on the defendant:

Clerk: \$40

State's Atty: \$50

Court: \$50

Automation: \$5

Judicial Security: \$15

Document Storage: \$5

Medical Costs: \$10

Surcharge/LEADS: \$25

Violent Crime: \$25

The defendant received no credit against any of these costs for the time he spent in pretrial custody.

¶ 5 The defendant filed a petition for relief from judgment, which the circuit court dismissed. The defendant argues that three of the costs (Court, Surcharge/LEADS, and Violent Crime) are actually fines that the circuit clerk lacked authority to impose, one of which he is entitled to credit against due to his pretrial custody. The defendant also argues that the amounts imposed by the circuit clerk for the Violent Crime and Surcharge/LEADS charges are incorrect. The State agrees that those three costs are fines. Additionally, the State points out that the Medical Costs imposed are actually a fine. The State agrees that the fines imposed by the circuit clerk should be vacated and the matter remanded for the circuit court to impose the appropriate fines and credits.

¶ 6 ANALYSIS

¶ 7 We first address whether the relief sought by the defendant is cognizable in a postjudgment petition. With respect to the defendant's claim for monetary credit against his fines, our supreme court has held a defendant's request for credit against fines imposed upon him may be made "at any time and at any stage of court proceedings." *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). With respect to the imposition of fines by the clerk, a circuit clerk cannot impose a fine on a defendant. *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20 (citing *People v. Scott*, 152 Ill. App. 3d 868, 873 (1987)). Any fines imposed by a circuit clerk are "void from their inception." *Id.* A void judgment can be attacked at any time in any proceeding. *Sarkissian v. Chicago Board of Education*,

201 Ill. 2d 95, 103 (2002). As we discuss below, some of the costs imposed by the circuit clerk were fines. Therefore, those costs are void and can be attacked at any time.

¶ 8 Review of a circuit court's imposition of fines "raises a question of statutory interpretation, which we review *de novo*." *People v. Price*, 375 Ill. App. 3d 684, 697 (2007) (citing *In re Estate of Dierkes*, 191 Ill. 2d 326, 330 (2000)).

¶ 9 We first determine whether the costs imposed by the circuit clerk are fees or fines. See *People v. Jones*, 223 Ill. 2d 569, 597 (2006). A fee is a cost charged by the state to recover expenses incurred by the State. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fine is a punishment imposed after conviction of a crime. *Id.* It is the dichotomy between punishment and cost recovery that determines whether or not a cost is a fee or fine; the label is not dispositive. *Id.* A circuit clerk can assess a fee, but it cannot assess a fine. *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 55-56. We now review the disputed costs imposed on the defendant to determine whether they are fines or fees. The fees and fines are evaluated as they existed at the time of the defendant's offense. See *People v. Bosley*, 197 Ill. App. 3d 215, 220 (1990).

¶ 10 Court

¶ 11 The circuit clerk imposed a \$50 court systems assessment. 55 ILCS 5/5-1101 (c)(1) (West 2004). Despite being labeled a fee, this is a fine. *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (citing *People v. Graves*, 235 Ill. 2d 244, 253 (2009)). Since this is a fine, the circuit clerk cannot assess it. Therefore, we vacate this assessment and remand for the circuit court to impose this fine. The defendant is entitled to credit against

this fine based on the time he spent in presentence incarceration. 725 ILCS 5/110-14 (West 2000).

¶ 12 Medical Costs

¶ 13 The county is entitled to a \$10 fee for each conviction. 730 ILCS 125/17 (West 2000). Although this is labeled as a fee in the statute, it is actually a fine because it does not seek to recoup cost actually associated with the defendant upon whom it is imposed. *People v. Larue*, 2014 IL App (4th) 120595, ¶ 57 (citing *People v. Jake*, 2011 IL App (4th) 090779, ¶ 29). Another sign that this is a fine is that in section 17 that creates the fine, it says: "The fee shall not be considered a part of the fine for purposes of any reduction in the fine." 730 ILCS 125/17 (West 2000). This language that this fee is not eligible for credit against fines would be superfluous if the cost were a fee because only fines are eligible to receive credit for time spent in presentence custody. 725 ILCS 5/110-14 (West 2000). As it is a fine, it cannot be assessed by the clerk. Therefore, this fine is vacated, and upon remand, the circuit court shall impose this fine. The defendant is not entitled to credit for time spent in presentence incarceration against this fine. 730 ILCS 125/17 (West 2000).

¶ 14 Surcharge/LEADS

¶ 15 Section 5-9-1(c) of the Unified Code of Corrections requires the court to impose a surcharge/LEADS "additional penalty of \$5 for each \$40, or fraction thereof, of fine imposed." 730 ILCS 5/5-9-1(c) (West 2004). This fine is to be imposed by the circuit court. *Id.* We vacate this assessment and remand for the circuit court to impose this fine. The defendant is not entitled to \$5 of credit against this fine for each day he spent in

presentence incarceration. *Id.* This fine is to be imposed by the court prior to the assessment of the Violent Crime Victims Fund fine. *People v. Williams*, 2013 IL App (4th) 120313, ¶ 21.

¶ 16 Violent Crime

¶ 17 The circuit court is also required to impose a Violent Crime Victims Assistance Fund fine of "\$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2004). As this is a fine, the circuit clerk was not authorized to assess it. Therefore, this assessment is vacated and remanded for the circuit court to impose this fine. The defendant is not entitled to credit against this fine in the amount of \$5 per day of pretrial confinement. *Id.*

¶ 18 CONCLUSION

¶ 19 The circuit clerk imposed fines that it was not authorized to impose. The fines must be imposed by the circuit court. The proper course of action is to vacate the assessments and remand for the circuit court to impose the fines. *People v. Montag*, 2014 IL App (4th) 120993, ¶ 40. The circuit court of Saline County's order dismissing the defendant's petition is reversed; the fines imposed by the circuit clerk are vacated; and the matter is remanded for the circuit court to impose fines in conformity with this order.

¶ 20 Reversed and remanded with directions.