FILED
November 1, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150620-U

NOS. 4-15-0620, 4-15-0621 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
FREDERICK T. JONES, JR.,	)	Nos. 7CF76,
Defendant-Appellant.	)	7CF1132
	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit clerk improperly imposed several fines, which requires recalculation of defendant's collection fees; defendant is also entitled to additional *per diem* credit.

¶ 2 Defendant, Frederick T. Jones, Jr., appeals the denial of his motion to reconsider sentence. On appeal, defendant argues (1) the circuit clerk improperly imposed several fines, which are void, (2) the total State's Attorney collection assessments should be reduced so as not to include the void fines in the calculations, and (3) he should be assessed a $10 credit toward his eligible fines awarded by the trial court and an additional $255 in *per diem* credit for time served following the revocation of his probation. The State concedes several of defendant's fines are

void because they were imposed by the circuit clerk but argues this court is without jurisdiction to reduce the State's Attorney collection assessments. The State concedes defendant is entitled to a $265 *per diem* credit against his eligible fines. We affirm in part as modified, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In January 2008, defendant was charged by information with two counts of aggravated fleeing and eluding a police officer (625 ILCS 5/11-204.1(a)(1), (4) (West 2006)) (counts I and II) and driving with a suspended license (625 ILCS 5/6-303(a) (West 2006)) (count III). In February 2008, defendant pleaded guilty to counts I and III in exchange for the State's agreement to drop count II. In January 2010, defendant pleaded guilty in unrelated Macon County case No. 07-CF-1132 to possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2006)). Also in January 2010, the trial court sentenced defendant in both case Nos. 07-CF-76 and 07-CF-1132 to concurrent terms of 24 months of probation pursuant to his negotiated plea agreements. The court assessed several fines in case No. 07-CF-1132, but it did not assess any fines in case No. 07-CF-76. The court awarded $10 *per diem* credit for time served.

¶ 5 By docket entry in November 2012, the circuit clerk assessed collection fees in the amount of $157.80 in case No. 07-CF-76 and $895.80 in case No. 07-CF-1132.

¶ 6 In November 2014, the trial court revoked defendant's probation in both cases after defendant admitted to the allegations contained in the State's petition to revoke probation. In December 2014, the court resentenced defendant to consecutive prison terms of one year with respect to count I in case No. 07-CF-76 and four years in case No. 07-CF-1132, to be followed

by one year of mandatory supervised release (MSR) in case No. 07-CF-76 and two years of MSR in case No. 07-CF-1132. With respect to count III in case No. 07-CF-76, the court resentenced defendant to 30 days in jail, with credit for 30 days already served.

¶ 7 The trial court did not assess any additional fines, but it did assess a $250 DNA testing fee in case No. 07-CF-76. In both cases, the court awarded additional *per diem* credit for time served between October 22, 2014, and December 11, 2014, totaling 51 days. In January 2015, defendant filed a motion to reduce his sentence, which the court denied in July 2015.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues, and the State concedes, the circuit clerk improperly imposed the following fines in both cases: (1) a $50 court systems assessment, (2) a $5 youth diversion assessment, (3) a $10 medical costs assessment, (4) a $10 Anti-Crime Fund assessment, and (5) a $20 violent crimes victims assistance (VCVA) assessment. We accept the State's concession, as these assessments are fines and were not imposed by the trial court. See *People v. Hible*, 2016 IL App (4th) 131096, ¶ 16, 53 N.E.3d 319 (holding court systems assessment is a fine); *People v. Graves*, 235 Ill. 2d 244, 252, 919 N.E.2d 906, 910 (2009) (holding the youth diversion assessment is a fine); *People v. Larue*, 2014 IL App (4th) 120595, ¶ 57, 10 N.E.3d 959 (holding the medical costs assessment is a fine); *People v. Jernigan*, 2014 IL App (4th) 130524, ¶¶ 40, 48, 23 N.E.3d 650 (holding the Anti-Crime Fund and VCVA assessments are fines). We thus vacate these fines in both case Nos. 07-CF-76 and 07-CF-1132. This brings defendant's total fines and fees to $588.80 in case No. 07-CF-76 and $5786.80 in case No. 07-CF-1132.

¶ 11 The circuit clerk assessed collection fees in both cases by docket entry in November 2012; the assessment is $157.80 in case No. 07-CF-76 and $895.80 in case No. 07-CF-1132. This fee represents 30% of defendant's outstanding assessments in defendant's respective cases, and the fee is authorized by section 5-9-3(e) of the Unified Code of Corrections in cases where a defendant defaults payment of such assessments (730 ILCS 5/5-9-3(e) (West 2012)).

¶ 12 Defendant argues his collection fees must be recalculated to exclude the void fines. Citing *People v. Jake*, 2011 IL App (4th) 090779, ¶ 23, 960 N.E.2d 45, the State argues we are without jurisdiction to consider defendant's argument because the collection fees "are in the nature of a separate civil penalty which must be challenged by a cause of action separate from the criminal case." In response, defendant argues this court has the authority to "reverse, affirm, or modify the judgment or order from which the appeal is taken," citing Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). Defendant also cites *People v. Smith*, 2014 IL App (4th) 121118, ¶ 88, 18 N.E.3d 912, for the proposition we may consider his argument because *Jake* is inapplicable where the defendant is merely challenging the amount of the fee and the fee was assessed prior to the notice of appeal.

¶ 13 A key difference between *Jake* and *Smith* is the timing of the assessment of the collection fees; in *Jake*, the collection fee was assessed after the notice of appeal was filed, which prevented jurisdiction from attaching with respect to the fee, while in *Smith*, the fee was assessed prior to the filing of the notice of appeal. Compare *Jake*, 2011 IL App (4th) 090779, ¶ 24, 960 N.E.2d 45, with *Smith*, 2014 IL App (4th) 121118, ¶¶ 87-88, 18 N.E.3d 912. Another key difference between *Jake* and the case *sub judice* is the defendant in *Jake* challenged the

circuit clerk's *authority* to impose the collection fee, whereas here, defendant only challenges the *calculation* of the fee. For these reasons, we find *Jake* distinguishable.

¶ 14 In *Smith*, we rejected the State's argument we were without jurisdiction to consider the propriety of the collection fee where the fee was imposed prior to defendant's notice of appeal. See *id.* ¶ 85. We noted the "collection fees and late fees [were] based on the total amount of fines and fees imposed by the circuit clerk." *Id.* ¶ 88. "[B]ecause several assessments were imposed improperly on multiple counts," we vacated the collection and late fees. *Id.* We find *Smith* more analogous here, as the collection fees were imposed prior to defendant's notice of appeal.

¶ 15 Pursuant to Rule 615(b)(2), we may "set aside, affirm, or modify any or all of the proceedings subsequent to or *dependent upon* the judgment or order from which the appeal is taken." (Emphasis added.) Ill. S. Ct. R. 615(b)(2) (eff. Jan. 1, 1967). The calculation of the collection fee is, by definition, dependent upon the correctness of the fines and fees imposed in a defendant's sentence. See 730 ILCS 5/5-9-3(e) (West 2012). We conclude defendant's notice of appeal conferred jurisdiction on this court to consider his sentence and Rule 615(b)(2) confers the authority to vacate or modify the collection fees because they are dependent upon defendant's sentence and the propriety of the fines and fees assessed therein. We thus reduce the collection fees to $129.30 in case No. 07-CF-76 and $867.30 in case No. 07-CF-1132.

¶ 16 Finally, defendant argues, and the State concedes, he is entitled to *per diem* credit in the amount of $255 for time spent in custody prior to his resentencing. We note the trial court already awarded this *per diem* credit in its sentencing order and therefore accept the State's concession. See 725 ILCS 5/110-14(a) (West 2014) (allowing a $5 per day credit against fines

for time spent in custody on a bailable offense). Defendant also requests the $10 *per diem* credit awarded by the court at his January 2010 sentencing be used to offset eligible fines, and the State agrees, but notes the $10 was erroneously used to offset defendant's $100 drug crime laboratory analysis fee in case No. 07-CF-1132. We, again, accept the State's concession and direct defendant's $265 *per diem* credit to be used to offset his eligible fines.

¶ 17 III. CONCLUSION

¶ 18 We vacate the (1) $50 court systems assessment, (2) $5 youth diversion assessment, (3) $10 medical costs assessment, (4) $10 Anti-Crime Fund assessment, and (5) $20 VCVA assessment in both case Nos. 07-CF-76 and 07-CF-1132; reduce the collection fees to $129.30 in case No. 07-CF-76 and $867.30 in case No. 07-CF-1132; and direct defendant's $265 *per diem* credit to be used to offset his eligible fines. We otherwise affirm defendant's conviction and sentence as modified. We remand to the trial court with the directions to instruct the circuit clerk to modify defendant's fines, fees, and credits consistent with this decision.

¶ 19 Affirmed in part as modified and vacated in part; cause remanded with directions.