2017 IL App (4th) 160716-U

NO. 4-16-0716

FILED
September 28, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
MICHAEL A. GLOVER,	)	No. 12CF236
Defendant-Appellant.	)	
	)	Honorable
	)	Teresa K. Righter,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court (1) affirmed in part, concluding (a) defendant's claims of ineffective assistance of counsel were governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and defendant failed to show he was prejudiced by counsel's errors; and (b) a new hearing on defendant's motion to withdraw his guilty plea was not necessary because defendant's absence from a hearing on remand for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014) did not prejudice him; and (2) vacated certain fines improperly imposed by the circuit clerk.

¶ 2 The State charged defendant, Michael A. Glover, with (1) burglary (Coles County case No. 12-CF-236) (720 ILCS 5/19-1(a) (West 2012)); (2) unlawful possession of a stolen vehicle (Coles County case No. 12-CF-329) (625 ILCS 5/4-103(a)(1) (West 2012)); and (3) burglary (Coles County case No. 12-CF-355) (720 ILCS 5/19-1(a) (West 2012)). In May 2014, pursuant to a negotiated guilty plea, defendant pleaded guilty to all three charges. That same month, defendant filed a *pro se* motion that sought (1) to withdraw his guilty pleas, and (2)

additional sentence credit for time he spent in custody prior to his plea. In May 2015, the trial court denied the motion to withdraw defendant's guilty pleas and entered an order to correct defendant's credit for time spent in custody.

¶ 3 Defendant appeals, arguing (1) counsel rendered ineffective assistance during the hearing on defendant's motion to withdraw his guilty pleas, and prejudice should be presumed because counsel argued against the motion; (2) a new hearing on the motion to withdraw the guilty pleas is necessary because defendant was not present at the hearing on remand for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014); and (3) the circuit clerk improperly imposed numerous fines. For the reasons that follow, we affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In July 2012, the State charged defendant with burglary (Coles County case No. 12-CF-236) (720 ILCS 5/19-1(a) (West 2012)). In September 2012, the State charged defendant with unlawful possession of a stolen vehicle (Coles County case No. 12-CF-329) (625 ILCS 5/4-103(a)(1) (West 2012)). In October 2012, the State charged defendant with burglary (Coles County case No. 12-CF-355) (720 ILCS 5/19-1(a) (West 2012)).

¶ 6 A. Guilty Plea

¶ 7 In May 2014, pursuant to a negotiated guilty plea, defendant pleaded guilty to all three charges. The negotiated plea provided for 10-year sentences on each charge, to run concurrently with each other, but consecutively to a 9-year sentence defendant received in Champaign County case No. 12-CF-1913. During the course of proceedings on the negotiated guilty plea, the following discussion between defendant and the trial court ensued:

"THE COURT: I do find a factual basis for the pleas in those cases. Has any force or threat been used to make you plead guilty today?

DEFENDANT GLOVER: No force or threat.

THE COURT: Okay. What I'm trying to get at is to make sure that you're doing this voluntarily, of your own free will, you're waiving your right to jury trial[,] which you have still[,] of your own free will, and you're asking me to do this because you want to enter into this plea today as opposed to go to jury trial in these cases. So with that said has any force or threat been used to make you plead guilty?

DEFENDANT GLOVER: No force or threat, just a promise.

THE COURT: What's the promise?

DEFENDANT GLOVER: Of the 10-year sentence with 100 days credit just as early on I was promised a lighter sentence if I pled guilty in Champaign [County case No. 12-CF-1913], which I did, but that deal was reneged on, so I'm going to see what happens today."

¶ 8 Defendant explained his attorney contacted him while he was in the Champaign County jail and informed him the Coles County assistant State's Attorney would give him a lighter sentence on his Coles County charges if he pleaded guilty in Champaign County case No. 12-CF-1913. According to defendant, the Coles County assistant State's Attorney offered a

negotiated plea for an eight-year sentence on the Coles County charges. The record contains a December 2013 e-mail exchange between the assistant State's Attorney and defendant's counsel, in which the assistant State's Attorney offered defendant an 8 1/2-year sentence. During a January 2014 status hearing, counsel for defendant asserted no plea deal had been reached.

¶ 9 Defendant further said, after he pleaded guilty in Champaign County case No. 12-CF-1913, someone in Coles County "reneged on the deal" and the eight-year offer was no longer available. The State clarified it initially offered defendant a 12-year sentence, but it later agreed to offer a shorter sentence if defendant pleaded guilty in the Champaign County case. Following defendant's plea in Champaign County, the State offered a lighter sentence, which defendant rejected. Regardless, the State noted the 10-year offer was lighter than the original 12-year offer.

¶ 10 After hearing these representations, the trial court asked whether defendant wanted to plead guilty to the terms as stated and defendant said, "The 10 years, yes, sir. Yes, Your Honor." The court determined defendant understood his rights and knowingly and voluntarily pleaded guilty in each of the three cases. The court sentenced defendant to concurrent 10-year terms of imprisonment, to run consecutively to the sentence entered in Champaign County case No. 12-CF-1913. In each case, the court ordered defendant to pay costs, $100 violent crime victims assistance fund assessments, and $5 drug court assessments.

¶ 11 B. Motion To Withdraw Guilty Plea

¶ 12 In May and June 2014, defendant filed two *pro se* letters asking (1) to withdraw his guilty pleas based on the State's previous 8 1/2-year offer and (2) to obtain additional sentence credit for time he spent in custody prior to his plea. In May 2015, defendant's counsel asked the trial court to treat the two letters as defendant's *pro se* motion to withdraw his guilty plea. Counsel first addressed defendant's claim regarding sentencing credit, stating it appeared

there might be a problem with the credit the Illinois Department of Corrections (DOC) was giving him. Counsel determined the problem, if any, was with either DOC calculations or the mittimus in Champaign County case No. 12-CF-1913. With regard to defendant's guilty plea contention, counsel stated as follows: "My review of that transcript shows that he did voice questions and concerns during the plea but that they appeared to be fully addressed and answered by the [j]udge, so that would be what I can add to the letters he has filed."

¶ 13 The trial court began to ask about the number of days of credit to which defendant was entitled, and the State stepped in to clarify. The State asserted defendant had 60 days' credit in case No. 12-CF-236, 32 days' credit in case No. 12-CF-355, and 8 days' credit in case No. 12-CF-329. The State acknowledged defendant had a substantial number of days' credit in Champaign County case No. 12-CF-1913, but it noted defendant could not get credit for those days in both Champaign and Coles Counties because the sentences were mandatorily consecutive. According to the State, in May 2014, the DOC website showed only the Coles County cases. DOC subsequently received the Champaign County mittimus, and the State asserted any issue with credit in that case must be taken up in Champaign County. The State then addressed the motion to withdraw the guilty plea.

¶ 14 Defendant, rather than his counsel, spoke up, and he asserted the State had accurately stated the credit he was entitled to, but he asserted DOC was refusing to give him credit for eight days. Defendant then stated, "Your Honor asked me was I—was I promised anything, and I told him, yes, I was. There was a plea that if I took a certain amount of time in Champaign [County case No. 12-CF-1913], that he [(the Coles County assistant State's Attorney)] would give me a single digit number under what Champaign had given me, but after I took the deal and came here to Coles County he [reneged] on the whole deal." The State

indicated such an offer had been made, but it was withdrawn before defendant accepted it. The trial court asked for a transcript of the plea hearing, which defense counsel provided. Defendant then requested a continuance because he had not had an opportunity to review that transcript.

¶ 15 The trial court reviewed the transcript of the guilty plea hearing and noted there was, during the guilty plea hearing, a discussion about a prior offer that was never brought before the court. The transcript revealed that after the discussion, the court asked defendant if he wanted the 10-year plea agreement as stated on the record and defendant responded, "The 10 years, yes, sir. Yes, Your Honor." Based on the transcript of the guilty plea hearing, the court determined defendant was properly admonished as to the 10-year plea deal and voluntarily pleaded guilty. Accordingly, the court denied defendant's motion to withdraw his guilty pleas.

¶ 16 The trial court then turned back to defendant's claim regarding sentencing credit. Following an exchange in which the court, the State, defense counsel, and defendant all participated, an error on the mittimus in Coles County case No. 12-CF-329 was discovered. The mittimus showed 32 days' credit when defendant should have received 8 days' credit. The mittimus in Coles County case No. 12-CF-355 correctly showed 32 days' credit. The State theorized the identical periods of credit may have caused confusion and led DOC to give defendant credit for only one 32-day period of credit. The court ordered an amended mittimus in Coles County case No. 12-CF-329 and included a note in the docket entry that the periods of credit in each of defendant's Coles County cases were separate from each other.

¶ 17 Defendant then asked about credit for the period of time from December 24, 2013 (the day after he was sentenced in Champaign County case No. 12-CF-1913), to May 2, 2014 (the date he was sentenced in Coles County), when he was in custody in Coles County. The State asserted defendant was not entitled to credit for that time because he began serving his

Champaign County sentence on December 24, 2013. However, the State further stated the issue depended on how DOC calculated credit in the Champaign County case. A discussion ensued between the court, the State, and defendant, during which defense counsel contributed very little. The confusion stemmed from how DOC calculated credit in the Champaign County case and the Coles County cases and what date defendant began serving his Champaign County sentence and his Coles County sentence. The record shows this issue was subsequently resolved by amending the mittimus in Champaign County case No. 12-CF-1913 to credit defendant for all of his days spent in pretrial custody in both Champaign and Coles Counties. Accordingly, the circuit court amended each mittimus in the Coles County cases to show zero days of credit.

¶ 18 Defendant appealed, and this court docketed the case as No. 4-15-0454. In June 2015, this court summarily remanded the cause for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Glover*, No. 4-15-0454 (June 3, 2015) (agreed summary remand on defendant's motion). Counsel's original Rule 604(d) certificate stated she consulted with defendant by mail to ascertain his contentions of error in the entry of his guilty plea. At the hearing on remand, defense counsel did not have defendant brought to Coles County for the Rule 604(d) hearing. Rather, she stood on the prior motions, the trial court indicated its prior rulings would stand, and counsel filed a new Rule 604(d) certificate, which strictly complied with the language of the rule.

¶ 19 C. Fines and Fees

¶ 20 The fines and fees sheet shows the following fines and fees were assessed in each of the three cases: (1) a $50 court finance fee; (2) a $10 medical cost fee; (3) a $10 child advocacy fee; (4) a $15 "state police ops" fee; and (5) a $2 State's Attorney automation fee. In Coles County case Nos. 12-CF-236 and 12-CF-355, the circuit clerk assessed (1) a $20 fine, and

(2) a $10 lump sum surcharge. In Coles County case No. 12-CF-329, the circuit clerk assessed (1) a $100 fine, and (2) a $30 lump sum surcharge.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues (1) counsel rendered ineffective assistance during the hearing on defendant's motion to withdraw his guilty plea, and prejudice should be presumed because counsel argued against the motion; (2) a new hearing on the motion to withdraw the guilty plea is necessary because defendant was not present at the Rule 604(d) hearing; and (3) the circuit clerk improperly imposed numerous fines. We turn first to defendant's ineffective assistance of counsel claim.

¶ 24 A. Ineffective Assistance

¶ 25 Defendant contends counsel rendered ineffective assistance during the hearing on the motion to withdraw the guilty plea, and prejudice should be presumed because counsel argued against the motion. Specifically, defendant contends prejudice should be presumed because counsel's effectiveness amounted to less than no representation at all where she (1) argued no relief could be granted on defendant's sentencing credit claim, and (2) actively argued against defendant's motion to withdraw his guilty plea.

¶ 26 Generally, claims of ineffective assistance of counsel are subject to the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the defendant must show (1) counsel's representation fell below an objective standard of reasonableness, and (2) prejudice. *People v. Smith*, 195 Ill. 2d 179, 187-88 (2000). A defendant must establish both prongs in order to prevail on a claim of ineffective assistance of counsel. *People v. Cherry*, 2016 IL 118728, ¶ 24, 63 N.E.3d 871. However, "prejudice may be presumed where (1) the defendant

'is denied counsel at a critical stage,' (2) counsel 'entirely fails to subject the prosecution's case to meaningful adversarial testing,' or (3) counsel is called upon to represent a client in circumstances under which no lawyer could provide effective assistance." *Id.* ¶ 25 (quoting *United States v. Cronic*, 466 U.S. 648, 659 (1984)). The United States Supreme Court later clarified, "When we spoke in *Cronic* of the possibility of presuming prejudice based on an attorney's failure to test the prosecutor's case, we indicated that the attorney's failure must be complete." *Bell v. Cone*, 535 U.S. 685, 697 (2002).

¶ 27 Defendant relies on the second of these three situations and argues counsel provided less than no representation. The supreme court in *Cherry* observed this second "*Cronic* exception" is narrow and infrequently applies. *Cherry*, 2016 IL 118728, ¶ 26, 63 N.E.3d 871. A presumption of prejudice is triggered only where counsel's performance falls to such a level as to amount to no representation at all. *Id.* This exception " 'only applies if counsel fails to contest *any* portion of the prosecution's case; if counsel mounts a partial defense, *Strickland* is the more appropriate test.' " (Emphasis in original.) *Id.* (quoting *United States v. Holman*, 314 F.3d 837, 839 n.1 (2002)). In emphasizing the narrowness of this exception, the *Cherry* court noted only two instances in which the supreme court found *per se* ineffective assistance in the more than 30 years since *Cronic* was decided. *Id.* ¶¶ 27, 29 (citing *People v. Hattery*, 109 Ill. 2d 449, 488 N.E.2d 513 (1985); *People v. Morris*, 209 Ill. 2d 137, 807 N.E.2d 377 (2004) (overruled on other grounds)).

¶ 28 We find *Cherry* instructive. In *Cherry*, the defendant, following a jury trial, filed a *pro se* letter alleging he received ineffective assistance of counsel. *Id.* ¶ 5. Following sentencing, the trial court confirmed with the defendant a breakdown in the lawyer-client relationship and appointed a public defender to take over the defendant's representation. *Id.* ¶ 6.

The public defender filed a motion to reconsider the defendant's sentence, which was denied. *Id.* ¶ 7. A month later, the trial court entered an order setting a hearing on the defendant's *pro se* letter alleging ineffective assistance of trial counsel and requesting a new trial pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). *Cherry*, 2016 IL 118728, ¶ 8, 63 N.E.3d 871. At the hearing, the public defender essentially summarized the defendant's claims of ineffective assistance of trial counsel raised in the *pro se* letter and raised one new basis for a claim of ineffective assistance of trial counsel. *Id.* The court denied the request for a new trial, and the defendant appealed and argued he received ineffective assistance from the public defender at the *Krankel* hearing. *Id.* at ¶¶ 8-9. Specifically, the defendant "argued that, by not calling any witnesses and instead merely repeating the claims contained in defendant's *pro se* letter, appointed counsel effectively provided no representation at all, such that prejudice should be presumed under the standard established in [*Cronic*]." *Id.* ¶ 9.

¶ 29 The supreme court rejected this argument. *Id.* ¶ 29. The court noted the public defender did not enter the case until after the defendant was convicted and sentenced, and the *Krankel* hearing took place after the defendant's posttrial motions had been denied. *Id.* "In other words, by the time of appointed counsel's alleged failures, 'the prosecution's case' was effectively over and no longer subject to 'meaningful adversarial testing.' " *Id.* (quoting *People v. Caballero*, 126 Ill. 2d 248, 267, 533 N.E.2d 1089, 1095 (1989)). The court further noted the public defender had filed and argued a motion to reconsider the defendant's sentence and argued the claims of ineffective assistance of trial counsel at the *Krankel* hearing. *Id.* The defendant argued the public defender should have done more to develop and advance the ineffective assistance claims during the *Krankel* hearing. *Id.* However, even if the public defender should have done more, the supreme court held this did not rise to the level of "entirely fail[ing] to

subject the prosecution's case to meaningful adversarial testing," and it determined the defendant's claims were governed by *Strickland*. (Internal quotation marks omitted.) *Id.*

¶ 30 Like in *Cherry*, the circumstances in this case do not fall within the narrow confines of the second *Cronic* exception. Here, defense counsel elected to stand on defendant's handwritten letters and asked the trial court to treat the letters as a motion to withdraw defendant's guilty plea. At the hearing on the motion to withdraw defendant's guilty plea, counsel advised the court she had examined the record and determined there might be a problem with defendant's sentence credit, but she concluded the problem was related to the Champaign County sentence in case No. 12-CF-1913. Defendant asserts counsel "argued against granting relief" on the sentence-credit issue. However, the record shows counsel concluded the Coles County circuit court did not have the power to correct an issue with credit in the Champaign County case. Defendant asserts he "was able to secure relief on the first issue he raised," and he points to the corrected mittimus in Coles County case No. 12-CF-329, which shows 8 days of credit instead of 32 days. Apparently the implication is that counsel could have secured relief, had she put forth a greater effort. Defendant ignores the fact the "relief" he received was (1) a reduction in the number of days of credit, and (2) not the relief he was actually requesting. Defendant sought credit for days spent in custody from December 2013, following his conviction in Champaign County, to May 2014, not a reduction in credit on his Coles County conviction.

¶ 31 Counsel also filed a certificate pursuant to Rule 604(d). Although the initial certificate was defective, counsel ultimately filed a proper Rule 604(d) certificate stating she consulted with defendant to ascertain his contentions of error. "One of the purposes of Rule 604(d) is to protect defendants from the ineffective assistance of counsel." *In re Omar A.*, 335 Ill. App. 3d 732, 733, 781 N.E.2d 668, 670 (2002) (citing *People v. Wilk*, 124 Ill. 2d 93, 107, 529

N.E.2d 218, 223 (1988)). Given defense counsel's statements regarding defendant's sentence credit, her appearance in court, and the filing of a Rule 604(d) certificate, we conclude this is not the type of nonrepresentation which triggers a presumption of prejudice under *Cronic*. See *Cherry*, 2016 IL 118728, ¶ 26, 63 N.E.3d 871; see also *People v. Bailey*, 364 Ill. App. 3d 404, 408, 846 N.E.2d 147, 150 (2006) (refusing to presume prejudice where the filing of a motion to reconsider sentence is a matter of discretion). As noted above, " '*Cronic* only applies if counsel fails to contest *any* portion of the prosecution's case; if counsel mounts a partial defense, *Strickland* is the more appropriate test.' " (Emphasis in original.) *Id.* (quoting *Holman*, 314 F.3d at 839 n.1).

¶ 32 Here, as in *Cherry*, defense counsel entered the case after defendant was convicted and sentenced. Defendant does not assert counsel failed to raise viable issues that would have entitled him to withdraw his guilty plea. If such viable issues existed, counsel's failure to raise them would amount to poor representation, not nonrepresentation triggering a presumption of prejudice. Moreover, given her appearance in court, her participation (however brief) in discussing the sentence-credit issue, and her contentions contained within the Rule 604(d) certificate, counsel provided some representation, which precludes the presumption of prejudice under *Cronic*. *Id.* ¶ 29 (failure to introduce evidence and call relevant witnesses at a *Krankel* hearing "would fall squarely in the category of poor representation, not 'no representation at all.' "). Accordingly, we conclude defendant's claim of ineffective assistance of counsel is appropriately examined under *Strickland*.

¶ 33 Turning to *Strickland*, to establish a claim of ineffective assistance of counsel, a defendant must show (1) counsel's performance was objectively unreasonable; and (2) there is a reasonable probability that, without counsel's errors, the results of the proceeding would have

been different. *Id.* ¶ 30. In his brief, defendant "placed all of his eggs in the *Cronic* basket" and made no argument regarding the prejudice prong of the *Strickland* analysis. *Id.* Defendant's failure to address the prejudice prong has forfeited any argument to that effect. *Id.* ¶¶ 30-31.

¶ 34 Moreover, defendant cannot show prejudice, because any claim related to sentence credit was rendered moot by subsequent actions taken by the parties to vacate all sentence credits in the Coles County cases and apply those days of credit to defendant's sentence in Champaign County case No. 12-CF-1913. Additionally, the guilty plea transcript shows defendant entered his plea knowingly and voluntarily. The transcript shows the trial court inquired into defendant's claims regarding an 8-year plea offer, which was later withdrawn. The court then asked whether defendant wanted to plead guilty to the terms as stated at the guilty plea hearing, and defendant said, "The 10 years, yes, sir. Yes, Your Honor." Based on this record, defendant cannot show the outcome of the hearing on the motion to withdraw his guilty plea would have been different but for counsel's errors.

¶ 35 B. Hearing on the Motion To Withdraw the Guilty Plea

¶ 36 Next, defendant contends a new hearing on the motion to withdraw the guilty plea is necessary because defendant was not present at the hearing on remand for strict compliance with Rule 604(d).

¶ 37 "Although a defendant has no absolute right to be present at a hearing on a motion to withdraw a guilty plea, a defendant should be allowed to be present in appropriate circumstances." *People v. Justice*, 349 Ill. App. 3d 981, 987, 811 N.E.2d 1273, 1278 (2004). If a motion to withdraw a guilty plea alleges facts outside the record or raises issues that require an evidentiary hearing, the defendant should be present. *Id.* Counsel for the defendant may waive this right if the defendant has voluntarily, knowingly, and intelligently waived his right. *Id.* at

988, 811 N.E.2d at 1279. However, if the defendant's absence does not prejudice him, we will not remand for a new hearing. *People v. Phillips*, 383 Ill. App. 3d 521, 551, 890 N.E.2d 1058, 1084 (2008).

¶ 38 On remand, counsel did not have defendant brought to Coles County for the Rule 604(d) hearing. However, counsel stood on the *pro se* motion, and the trial court stood on its prior rulings. No evidence was heard, nor were any matters raised that were not addressed at the previous hearing—where defendant was present—on the motion to withdraw defendant's guilty plea. Rather, counsel merely filed a new certificate that strictly complied with the language of Rule 604(d).

¶ 39 Defendant argues his *pro se* motion alleged facts outside of the record. Specifically, defendant alleged he had previously reached a plea deal with the State for 8 1/2 years' imprisonment, which was a fact outside the record requiring defendant's presence at the hearing on remand. However, the record shows defendant repeatedly brought these facts up to the trial court, including at the guilty plea hearing. The court thereafter confirmed defendant understood he was pleading guilty in exchange for a 10-year sentence. The State argues defendant made facts regarding the 8 1/2-year plea offer a matter of record because defendant attached e-mails to his notice of appeal that showed the State did indeed offer an 8 1/2-year deal. The State further argues the e-mails showed defendant made a counteroffer, thus extinguishing the offer.

¶ 40 In his reply brief, defendant alleges the e-mails attached to his notice of appeal were never brought to the trial court's attention and were not incorporated into the court's ruling, thus requiring remand for another hearing with defendant present. The record contains a copy of an e-mail dated December 31, 2013, in which the State offered an 8 1/2-year plea agreement.

However, at a January 2, 2014, hearing, counsel for defendant informed the trial court no agreement had been reached.

¶ 41 Even if the e-mail was a matter outside of the record, defendant cannot show he was prejudiced by his absence at the hearing on remand for strict compliance with Rule 604(d) because the e-mail does not support his claim. The record clearly shows the 8 1/2-year offer had lapsed, been rejected, or been withdrawn by the time defendant did, in fact, plead guilty to the 10-year term. Defendant raises no other argument as to how his absence at the hearing on remand prejudiced him. Because defendant's absence did not prejudice him, we decline to remand for a new hearing. See *Phillips*, 383 Ill. App. 3d at 551, 890 N.E.2d at 1084.

¶ 42 C. Fines and Fees

¶ 43 Defendant contends the following fines were improperly assessed by the circuit clerk in each of the three cases and should be vacated: (1) a $50 court finance fee; (2) a $10 medical cost fee; (3) a $10 child advocacy fee; and (4) a $15 "state police ops" fee. The State concedes all of these assessments are fines improperly assessed by the circuit clerk and should be vacated. See *People v. Daily*, 2016 IL App (4th) 150588, ¶ 30, 74 N.E.3d 15 (circuit clerk lacks authority to impose fines). We accept the State's concession and vacate the above assessments improperly assessed by the circuit clerk.

¶ 44 Defendant also asserts, in Coles County case Nos. 12-CF-236 and 12-CF-355, the circuit clerk improperly assessed (1) a $20 fine, and (2) a $10 lump sum surcharge. In Coles County case No. 12-CF-329, defendant contends the circuit clerk improperly assessed (1) a $100 fine, and (2) a $30 lump sum surcharge. Defendant contends these clerk-imposed fines should be vacated. We agree these fines were improperly assessed by the circuit clerk. Accordingly, we vacate these assessments improperly assessed by the circuit clerk.

¶ 45 Defendant contends the circuit clerk also improperly imposed a $2 State's Attorney automation fee in each of the three cases. The State asserts this court has previously held the State's Attorney automation fee is, indeed, a fee and, thus, it was properly imposed by the circuit clerk. *Id.* ¶ 31. See also *People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶ 114-16, 55 N.E.3d 117. Defendant asks this court to reconsider our holding in *Daily* in light of the First District Appellate Court's decision in *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, 64 N.E.3d 647 (holding the State's Attorney automation fee was not a "fee" because it did "not compensate the [S]tate for costs associated in prosecuting a particular defendant"). We decline to reconsider our holding in either *Warren* or *Daily* and continue to hold the $2 State's Attorney automation assessment is a fee. See *People v. Maggio*, 2017 IL App (4th) 150287, ¶ 54. Accordingly, we do not vacate the $2 State's Attorney automation fee.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we vacate the fines improperly imposed by the circuit clerk. We otherwise affirm the trial court's judgment. As part of our judgment, because the State successfully defended a portion of this appeal, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 48 Affirmed in part and vacated in part.