

No. 1-16-2913

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------------------|---|----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 15 MC3 30583 |
| |) | |
| ARKADIUSZ MACIOROWSKI, |) | Honorable |
| |) | James N. Karahalios, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss defendant's appeal for lack of jurisdiction.

¶ 2 Defendant Arkadiusz Maciorowski appeals from an order of the circuit court revoking his probation and sentencing him to three years' imprisonment for aggravated fleeing and attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2016)). He had previously pleaded guilty to the charge, been sentenced to 120 days in the Cook County Department of Corrections and to 30 months' probation, and been assessed fines and fees in the amount of \$634. On appeal,

defendant argues one monetary assessment must be vacated and several fees are actually fines, subject to offset by presentence incarceration credit. We dismiss.

¶ 3 On June 22, 2016, defendant entered a negotiated guilty plea to one count of aggravated fleeing and attempting to elude a peace officer in exchange for a sentence of 120 days in the Cook County Department of Corrections and 30 months' probation. The factual basis for the plea was that a police officer observed defendant making an illegal turn and, after the officer activated his emergency lights and sirens, defendant failed to stop and drove at least 21 miles per hour over the legal speed limit. The court awarded defendant 21 days of presentence custody credit and entered an order assessing \$634 in fines, fees, and costs. It admonished defendant, *inter alia*, that he had the right to appeal the court's decision but would first have to file with the clerk of court a written motion to withdraw his guilty plea and vacate the judgment. Defendant did not move to withdraw his guilty plea. Nor did he file a direct appeal.

¶ 4 Some three months later, the State filed a petition to revoke defendant's probation based on his failure to satisfy certain conditions of his probation. On October 7, 2016, the trial court held a hearing, revoked defendant's probation, and sentenced him to three years' imprisonment on the aggravated fleeing charge. It did not mention fines and fees. The court subsequently denied defendant's motion to reconsider, and defendant filed a timely notice of appeal.

¶ 5 Defendant does not challenge the court's finding of a violation of probation or its order revoking probation and sentencing him to a term of imprisonment. Instead, he challenges the fines and fees imposed in conjunction with his guilty plea. Specifically, he argues one monetary assessment should be vacated and various fees are actually fines subject to presentence incarceration credit. We find we have no jurisdiction to consider defendant's challenge to these

assessments. See *People v. Thompson*, 2015 IL 118151, ¶ 26 (we have an independent duty to consider our jurisdiction).

¶ 6 As reflected in the report of the plea hearing and the common law record, the trial court assessed fines and fees against defendant in conjunction with his negotiated guilty plea. When, some months later, it revoked defendant's probation and sentenced him to three years' imprisonment, it made no mention of fines and fees. The record does not reflect that fines or fees were imposed upon the revocation of probation. The only fines, fees and costs order contained in the record on appeal is the order entered at the time of the guilty plea, and this is the order to which defendant cites on appeal. Thus, defendant is clearly challenging assessments imposed following his negotiated plea.

¶ 7 Pursuant to Supreme Court Rule 604(d) (eff. Mar. 8, 2016), a defendant who desires to appeal from a judgment entered upon a negotiated guilty plea must first file in the trial court a written postplea motion to vacate the judgment and withdraw his guilty plea within 30 days of the date on which sentence was imposed. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). If that motion is denied, the defendant then must file a notice of appeal within 30 days of that denial. *In re J.T.*, 221 Ill. 2d 338, 346 (2006). Filing a timely Rule 604(d) motion is a condition precedent to appealing a judgment entered on a guilty plea. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011). Failure to file the requisite motion precludes the appellate court from addressing the merits of the appeal and the appeal must be dismissed. *Id.*

¶ 8 Defendant raises his challenge to the fines and fees imposed on his plea for the first time on appeal from the revocation of his probation. As he did not file a motion to withdraw his guilty plea and vacate the judgment or a notice of appeal directed thereto, we lack jurisdiction to

consider any issues arising from either his guilty plea or his sentence thereon. *J.T.*, 221 Ill. 2d at 346-47.

¶ 9 We note that, as a general rule, an appeal from a probation revocation is limited to issues arising out of the revocation proceeding. See *People v. Eisenberg*, 109 Ill. App. 3d 98, 100-01 (1982). Defendant's challenge to the fines and fees arose from the judgment on the guilty plea, not from the probation revocation, and we therefore could not consider those claims. See *People v. Combs*, 197 Ill. App. 3d 758, 761-62 (1990). Moreover, we are not faced with a scenario where the trial court again imposed fines or fees following the revocation of probation. See, e.g., *People v. Felton*, 385 Ill. App. 3d 802, 804-05 (2008) (where the trial court resentenced defendant following the revocation of probation and "again imposed *** restitution," the "defendant [was] not challenging a condition of her prior probation but rather part of her new sentence imposed after the revocation of probation"); *People v. Bell*, 296 Ill. App. 3d 146, 154 (1998) (after revoking probation, the trial court again imposed a term of probation as well as monetary charges, constituting "a new sentence of probation and new monetary assessments" that were appealable).

¶ 10 In sum, defendant raises his challenge to the fines and fees imposed on his plea for the first time on appeal from the revocation of his probation. He did not comply with Rule 604(d) following his guilty plea. We therefore dismiss his appeal for lack of jurisdiction.

¶ 11 Appeal dismissed.