

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).

FILED

December 19, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160384-U
NO. 4-16-0384

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
BENJAMIN K. SMITH,)	No. 14CF363
Defendant-Appellant.)	
)	Honorable
)	Thomas M. O’Shaughnessy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Harris and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court is directed to apply defendant’s presentence custody credit against his \$200 domestic violence fine. However, this court does not have jurisdiction over fines improperly assessed by the circuit clerk.

¶ 2 On December 28, 2015, defendant Benjamin K. Smith pleaded guilty to the offense of aggravated domestic battery. On January 25, 2016, the trial court sentenced defendant to six years in prison with credit for 539 days of pretrial detention. The court ordered defendant to pay “all mandatory costs, fines and assessments, including the \$200 domestic violence fine.” Defendant appeals, arguing his monetary presentence custody credit was not applied against his applicable fines. Defendant also argues the circuit clerk improperly assessed fines against him. We remand this case for the trial court to apply defendant’s presentence custody credit against his applicable fines.

¶ 3 I. BACKGROUND

¶ 4 On August 5, 2014, the State charged defendant by information with aggravated battery (great bodily harm to a child) (720 ILCS 5/12-3.05(b)(1) (West 2014)), aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)), and obstructing justice (720 ILCS 5/31-4(a) (West 2014)).

¶ 5 On December 28, 2015, defendant agreed to enter an open plea to the aggravated domestic battery charge in exchange for the State dismissing the other two charges. The trial court accepted defendant's plea.

¶ 6 On January 25, 2016, the trial court sentenced defendant to a term of six years' imprisonment with credit for 539 days served. The court ordered defendant to pay court costs and imposed a \$200 domestic violence fine.

¶ 7 On January 28, 2016, defendant filed a motion to reconsider sentence, arguing his sentence was excessive. According to defendant, the trial court failed to consider appropriate mitigating factors pursuant to section 5-5-3.1 of the Unified Code of Corrections (730 ILCS 5/5-5-3.1 (West 2016)). On February 9, 2016, defendant filed a motion to withdraw his guilty plea, alleging he did not knowingly and voluntarily enter his plea because he was not fully aware of the sentencing ramifications. At a hearing on April 29, 2016, defendant withdrew his motion to withdraw his guilty plea. The trial court took defendant's motion to reconsider sentence under advisement.

¶ 8 On May 17, 2016, the trial court entered a written order denying defendant's motion to reconsider his sentence. On May 19, 2016, defendant filed his notice of appeal. On June 13, 2016, defendant's appellate counsel filed an amended notice of appeal.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues he is entitled to a mandatory credit of \$5 per day against his

finer for each day he spent in custody prior to sentencing on aailable offense. 725 ILCS 5/110-14 (West 2016); *People v. Woodward*, 175 Ill. 2d 435, 453-58, 677 N.E.2d 935, 944-46 (1997). According to defendant, the \$200 domestic violence fine imposed by the trial court should be completely offset by the monetary credit he accrued prior to sentencing. The State concedes defendant's monetary credit offsets his \$200 domestic violence fine. We accept the State's concession and remand this case to the trial court for it to apply defendant's monetary presentence custody credit against his domestic violence fine.

¶ 11 Defendant also argues the circuit clerk improperly imposed certain fines on him, which he identifies as follows:

“(1) Clerk \$80, (2) Court \$50, (3) Automation \$15, (4) Document Storage \$15, (5) Anti-Crime Fund \$2, (6) State's Attorney \$40, (7) Judicial Security \$25, (8) Violent Crime \$20, (9) Youth Diversion \$4, (10) Clerk Op Deduction \$[0].20, (11) Drug Court \$3.80, (12) State Police Operations \$15, and (13) State's Attorney Automation Fee \$2.”

A circuit clerk has no authority to impose fines on its own. *People v. Beasley*, 2017 IL App (4th) 150291, ¶ 43, 85 N.E.3d 568.

¶ 12 However, the State argues this court lacks jurisdiction and a sufficient record to review defendant's claim the circuit clerk improperly imposed these fines on defendant. We agree we do not have jurisdiction over this issue. In *People v. Vara*, 2018 IL 121823, ¶ 23, our supreme court held the appellate court does not have jurisdiction over fines improperly imposed by a circuit clerk. Defendant is free to raise the issue of the circuit court's alleged improper imposition of fines with the trial court.

¶ 13

III. CONCLUSION

¶ 14 For the reasons stated, we remand this case to the trial court for it to apply defendant's monetary presentence custody credit against his \$200 domestic violence fine. On remand, defendant is free to raise the issue of the circuit clerk's alleged improper imposition of fines with the trial court.

¶ 15 Remanded with directions.