

2019 IL App (1st) 162350-U

No. 1-16-2350

Order filed May 10, 2019

Modified order filed June 7, 2019

SIXTH DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 C6 60497
	)	
JOSHUA LACEY,	)	Honorable
	)	Allen F. Murphy,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* Pursuant to Supreme Court Rule 472(e), we remand for the circuit court to consider defendant's claims regarding fines and fees, raised for the first time on appeal from the disposition of his petition for relief from judgment.

¶ 2 Pursuant to a 2016 negotiated guilty plea, defendant Joshua Lacey was convicted of aggravated unlawful use of a weapon (AUUW) and sentenced to three years' imprisonment with fines and fees. Defendant now appeals from the denial of his 2016 petition for relief from judgment (735 ILCS 5/2-1401 (West 2016)). On appeal, he contends for the first time that one of his fines is erroneous and certain of his fees are actually fines for which he should receive presentence incarceration credit. For the reasons stated below, we remand for defendant to raise his fines and fees claims in the circuit court, and otherwise affirm.

¶ 3 Defendant was charged with five weapons offenses allegedly committed on or about June 21, 2015, including AUUW (720 ILCS 5/24-1.6(a)(1), (3)(a-5) (West 2014)) for allegedly knowingly carrying a firearm that was uncased, loaded, and immediately accessible when he had not been issued a valid concealed carry license and had previously been convicted of the felony offense of robbery. On February 9, 2016, pursuant to a plea agreement, defendant pled guilty to the AUUW count and was sentenced to three years' imprisonment with 233 days' credit for presentence incarceration and with fines and fees. The State *nolle prossed* the other charges. Defendant did not file a motion to withdraw his plea and did not appeal.

¶ 4 In July 2016, defendant filed his *pro se* section 2-1401 petition raising one claim: that the offense of AUUW has been declared facially unconstitutional and void *ab initio*. The circuit court denied the petition on August 3, 2016, noting that the offense of AUUW based on not having a valid concealed carry license has not been found unconstitutional.

¶ 5 On appeal, defendant raises no issues regarding the denial of his petition. Instead, he contends for the first time that his \$100 trauma fund fine (730 ILCS 5/5-9-1.10 (West 2014)) was

improperly assessed, he should receive monetary presentence incarceration credit against certain fines, and certain of his fees are actually fines for which he should receive the credit.

¶ 6 Illinois Supreme Court Rule 472 sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the “imposition or calculation of fines, fees, assessments, and costs” and “application of *per diem* credit against fines.” Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). Rule 472(a) provides that, effective March 1, 2019, the circuit court retains jurisdiction to correct the enumerated errors at any time following judgment in a criminal case, even during the pendency of an appeal. “No appeal may be taken” on the ground of any of the sentencing errors enumerated in the Rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c).

¶ 7 Defendant here did not raise his challenges to the fines and fees order in the circuit court. We note that he filed his notice of appeal prior to the March 1, 2019, effective date of Rule 472(a)-(d) and this court has found that Rule 472 applies prospectively. *People v. Barr*, 2019 IL App (1st) 163035, ¶¶ 6, 8, 15. However, since this court decided *Barr*, our supreme court has amended Rule 472 to add paragraph (e):

“In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472 (a)(1), (2) (eff. May 17, 2019).

Unlike paragraphs (a)-(d) of Rule 472, which were adopted on February 26 but did not take effect until March 1, paragraph (e) took effect immediately. We conclude that our supreme court

intended that paragraph (e), by its clear language and immediate effective date, apply to all cases pending on appeal as of March 1, 2019, which would be the requisite ongoing proceedings. See *Barr*, 2019 IL App (1st) 163035, ¶¶ 7-15.

¶ 8 Defendant's case was still pending before this court on March 1, 2019, and we shall therefore apply Rule 472(e) here. It directs us to remand an appeal raising for the first time on appeal any of the sentencing errors enumerated in the Rule – as this appeal does – so that the defendant may file in the circuit court a motion raising such errors pursuant to Rule 472(a).

¶ 9 Accordingly, pursuant to Supreme Court Rule 472(e), we remand this cause to the circuit court to allow defendant to file a motion pursuant to Rule 472(a). Defendant having raised no contention of error regarding the denial of his section 2-1401 petition, we affirm that disposition.

¶ 10 Affirmed and remanded.