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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15CR11351
	)	
MARIO BOOKER,	)	
	)	The Honorable
Defendant-Appellant.	)	Charles P. Burns,
	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Lavin and Hyman concurred in the judgment.

**ORDER**

¶ 1       *Held:* Defendant’s constitutional challenges to the Illinois Sex Offender Registration Act dismissed where the requirement that he register as a sex offender and be subject to the other mandates and restrictions embodied in the Act were collateral consequences of his convictions for aggravated kidnapping and aggravated criminal sexual assault and as such, his claims were not subject to review on direct appeal from those convictions. Defendant’s contentions of error with respect to the monetary assessments imposed upon him by the circuit court remanded so that he can file a motion in the circuit court challenging those assessments in accordance with Illinois Supreme Court Rule 472(e) (eff. May 17, 2019).

¶ 2 Following a jury trial, defendant Mario Booker was convicted of aggravated kidnapping and aggravated criminal sexual assault. He was sentenced to two consecutive terms of 15 years' imprisonment and assessed a number of court-ordered fines, fees, and costs. In light of his aggravated criminal sexual assault conviction, defendant also became subject to the registration requirements of the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2014)). On appeal, defendant raises no challenge to the sufficiency of the evidence and does not dispute the underlying facts pertaining to his convictions; rather, he contests the constitutionality of SORA and challenges various monetary assessments imposed by the circuit court. For the reasons explained herein, we dismiss this appeal in part and remand the matter in part.

¶ 3 BACKGROUND

¶ 4 Because defendant does not contest the sufficiency of the evidence, we need not discuss in detail all of the evidence presented at trial. We will, however, provide a brief overview of the circumstances of the crime and the jury's verdict.

¶ 5 On the evening of August 27, 2012, N.K. was attacked by a man as she was walking to her cousin's house. The man approached her from behind, put her into a chokehold, and dragged her into a nearby gangway. In the gangway, the man forced her to perform oral sex on him. He then raped her vaginally. After the assault, N.K. made her way to her cousin's house and relayed what had occurred. Her cousin called 911 to report the crime, and N.K. was transported to Holy Cross Hospital where a rape kit was administered. Defendant was arrested in connection with the sexual assault of N.K. based on DNA evidence linking him to the crime. At trial, defendant admitted that he had a sexual encounter with N.K., but testified that the encounter was consensual. He insinuated that N.K. was a prostitute who made up a false claim of sexual assault when he refused to pay her for her services. The jury, however, disbelieved defendant's account

of his encounter with N.K. and found him guilty of aggravated kidnapping and aggravated criminal sexual assault.

¶ 6 At the sentencing hearing that followed, the court heard evidence presented in aggravation and mitigation. After considering that evidence, the court sentenced defendant to two consecutive terms of 15 years' imprisonment. The court awarded defendant 451 days of presentencing incarceration credit and also assessed a number of fines, fees, and costs. In light of his conviction for aggravated criminal sexual assault, defendant automatically became subject to the sex offender registration requirements of SORA (730 ILCS 150/2(B), 150/3(a) (West 2012)); however, the requirement that defendant register as a sex offender was not specifically incorporated into the circuit court's judgment. Defendant's posttrial and postsentencing motions were denied and this appeal followed.

¶ 7 ANALYSIS

¶ 8 On appeal, defendant challenges the constitutionality of SORA, arguing that its statutory scheme "violates federal and Illinois constitutional due process rights by infringing on registrants' fundamental liberty interests, where it places upon registrants severe restrictions, intrusive monitoring, and burdensome registration requirements without providing them with procedural or substantive due process" of law.

¶ 9 The State, in turn, submits that this court lacks jurisdiction to consider defendant's constitutional challenges to SORA. In support, the State cites our supreme court's recent decision in *People v. Bingham*, 2018 IL 122008, and argues that pursuant to that decision, "defendant cannot raise a constitutional challenge to the Illinois Sex Offender Registration Act (SORA) on direct appeal from his criminal conviction which triggered its application."

¶ 10 On review, we agree with the State that *Bingham* is dispositive. As a threshold matter, we note that our supreme court issued its decision in *Bingham* on September 20, 2018, and denied rehearing on the matter on November 26, 2018. Defendant’s appellate brief was filed on November 30, 2018, after the *Bingham* decision had been issued and rehearing denied. Defendant, however, failed to cite to the case and acknowledge the precedent established therein in his opening brief. Moreover, defendant did not submit a reply brief or otherwise respond to the State’s argument that he was foreclosed from challenging the constitutionality of SORA on direct appeal in light of *Bingham*. We do not condone defendant’s failure to acknowledge recent binding authority relevant to the matters raised in his appeal. Notwithstanding defendant’s failure to fully develop his argument with current prevailing legal authority, we will conduct our own examination of the *Bingham* decision and its application to the case at bar.

¶ 11 In *Bingham*, the defendant was convicted of attempted criminal sexual assault in 1983. 2018 IL 122008, ¶ 1. He was not required to register as a sex offender at the time of that conviction; however, subsequent amendments to SORA imposed a registration requirement upon him when he was convicted of theft decades later. *Id.* The defendant then mounted a constitutional challenge to SORA’s registration requirement on direct appeal from his theft conviction, arguing that the registration requirement violated his substantive due process rights as well as *ex post facto* principles. ¶ 14. On review, the supreme court found that it lacked jurisdiction to resolve the defendant’s constitutional claims. In doing so, the court observed that a reviewing court’s scope of review is constrained by Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967) to the “trial court’s judgment and the proceedings and orders related to it.” *Id.* ¶ 16. Specifically, in accordance with the rule, a reviewing court may only “(1) reverse, affirm, or modify the judgment or order from which the appeal is taken; (2) 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; (3) reduce the degree of offense of which the appellant was convicted; (4) reduce the punishment imposed by the trial court; or (5) order a new trial.’ ” *Id.* (quoting Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967)).

¶ 12 The court then found that the defendant’s constitutional challenge to SORA did not fall within the permissible scope of review afforded to reviewing courts pursuant to that rule. In doing so, the court explained that the defendant’s obligation to register as a sex offender was not encompassed within the judgment or any order of the trial court; rather, it arose by operation of law and was a collateral consequence of his conviction. *Id.* ¶¶ 17, 19. Therefore, SORA’s registration requirement could likewise not be construed as a “proceeding” or as a “punishment imposed by the trial court.” *Id.* ¶ 18. As such, the court found that “none of the criteria of Rule 615(b) for invoking the powers of a reviewing court have been satisfied in this case” and concluded that “a reviewing court has no power on direct appeal of a criminal conviction to order that defendant be relieved of the obligation to register as a sex offender when there is neither an obligation to register imposed by the trial court nor an order or conviction that the defendant is appealing that is directly related to the obligation or the failure to register.” *Id.* ¶ 18. The court reasoned that “[a] contrary rule would permit appeal of collateral issues on direct appeal from a criminal conviction not only to sex offender obligations but to a host of other collateral consequences that are not imposed by trial courts and are not embodied in their judgments,” such as the loss of the right of a felon to vote or possess firearms. *Id.* ¶ 19. Moreover, “[a]llowing defendants to challenge the collateral consequences of a conviction on direct appeal would place a reviewing court in the position of ruling on the validity (or resolving the details) of regulatory programs administered by state agencies and officials that are not parties to the action.” *Id.*

¶ 13 Accordingly, because the court determined that a reviewing court has no authority on direct appeal of a criminal conviction to order that a defendant be relieved of his obligation to register as a sex offender under SORA when that obligation was not imposed upon him by the trial court and where the appeal did not directly relate to the defendant's failure to register as a sex offender or failure to abide by any other SORA requirements, it dismissed the defendant's constitutional challenges to SORA. *Id.* ¶ 25. The court, however, suggested that in the future, constitutional challenges to SORA could be mounted in one of two ways: "(1) through a direct appeal from a case finding a defendant guilty of violating the regulation he attempts to challenge as unconstitutional, such as the sex offender registration law [citation], or (2) by filing a civil suit seeking a declaration of unconstitutionality and relief from the classification as well as the burdens of sex offender registration." *Id.* ¶ 21.

¶ 14 Here, we conclude that defendant's constitutional challenges to SORA are foreclosed by *Bingham*. Like *Bingham*, the instant case is a direct appeal from a criminal conviction in which defendant challenges the constitutionality of SORA. Defendant's obligation to register as a sex offender, however, was not a requirement that was imposed by the trial court or embodied in its judgment; rather it arose by operation of law and was a collateral consequence of his conviction and his status as a sex offender. Because defendant's obligation to register as a sex offender was not imposed upon him by the trial court and because this appeal has no direct relation to his obligation or failure to register as a sex offender, defendant's constitutional challenges to SORA are not properly before this court. *Id.* ¶ 18.

¶ 15 In so finding, we acknowledge that the facts and procedural posture of this case differ slightly from those present in *Bingham* because the sex offense that resulted in the defendant's registration requirement in *Bingham* was not the conviction on appeal before the court; rather, he

was contesting the constitutionality of SORA following his conviction for theft. Here, in contrast, defendant is raising a constitutional challenge to SORA on appeal from his conviction for aggravated criminal sexual assault. This court, however, has repeatedly found that *Bingham* controls and precludes reviewing courts from addressing a defendant's constitutional challenge to SORA on direct appeal from a sex offense where, as here, the registration requirement is not included in the judgment and where the appeal has no direct relation to the defendant's obligation or failure to register as a sex offender in compliance with SORA's mandates. *Compare People v. Christian*, 2019 IL App (1st) 153155, ¶ 17 (dismissing the defendant's due process and proportionate penalties challenges to SORA that were raised on direct appeal from his aggravated criminal sexual abuse conviction because the sex offender registration requirement was not imposed upon him by the trial court, and as a result, his constitutional challenges exceeded our scope of power to grant relief under Supreme Court Rule 615(b)); *People v. McArthur*, 2019 IL App (1st) 150626-B, ¶ 46 (dismissing the defendant's constitutional challenges to SORA that he raised on direct appeal from his aggravated criminal sexual abuse conviction where the trial court did not impose upon the defendant the obligation to register as a sex offender and where the appeal had no direct relation to his obligation or failure to register); *People v. Denis*, 2019 IL App (1st) 151892, ¶ 97 (finding that we lacked jurisdiction to consider the defendant's constitutional challenges to SORA on direct appeal from his criminal sexual abuse and aggravated criminal sexual assault convictions because his obligation to register as a sex offender was a collateral consequence of his convictions); *with People v. Rodriguez*, 2019 IL App (1st) 151938-B, ¶ 10 (finding that the defendant's constitutional challenge to SORA could be reviewed on appeal because the trial court's judgment contained an "explicit[] \*\*\* pronouncement" that the defendant was required to register as a sex offender and

defendant was appealing from that judgment); *and People v. Lee*, 2019 IL App (1st) 152522, ¶ 27 (finding that the defendant’s constitutional challenges to SORA were properly before the appellate court because he was directly appealing his conviction for violating SORA’s registration requirements). In light of the foregoing precedent, we conclude that we lack jurisdiction to adjudicate defendant’s constitutional challenges to SORA and dismiss that portion of his appeal.

¶ 16 Monetary Assessments

¶ 17 Defendant next challenges the circuit court’s order imposing various fines, fees, and costs. Specifically, he argues that the court’s “fines and fees order should be corrected to apply his *per diem* pre-sentence incarceration credit to several assessments that are denominated as ‘fees’ but are actually fines.” Defendant acknowledges that he failed to challenge the fines and fees order in the circuit court, but urges this court to review his claims for plain error.

¶ 18 The State, however, invokes Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019) and argues that defendant’s failure to raise these claims of error in the circuit court precludes this court from adjudicating his claims for the first time on appeal. Citing a recent amendment to the rule, the State submits that the proper recourse is to remand the matter to the circuit court where defendant may file an appropriate motion to address his contentions of error concerning the monetary assessments.

¶ 19 Illinois Supreme Court Rule 472 sets forth the procedure to correct various sentencing errors, including “[e]rrors in the imposition or calculation of fines, fees, and assessments or costs,” “[e]rrors in the application of per diem credits against fines,” and “[e]rrors in the calculation of presentence custody credit.” Ill. S. Ct. R. 472(a)(1)-(3) (eff. Mar. 1, 2019). Pursuant to the rule, the circuit court retains jurisdiction to correct sentencing errors “at any time



following judgment and after notice to the parties, including during the pendency of an appeal” and “[n]o appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error \*\*\*unless such error has first been raised in the circuit court.” Ill. S. Ct. R. 472(a), (c) (eff. March 1, 2019). On May 17, 2019, while this appeal was pending, the rule was amended to include subsection (e), which provides:

“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.” (Emphasis added.) Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 20 Accordingly, pursuant to the rule, defendant is entitled to challenge his claims of sentencing error with respect to the circuit court’s imposition of various fines and fees; however, he must first file a motion in the circuit court seeking correction of those purported errors. *People v. Loggins*, 2019 IL App (1st) 160482, ¶ 131; *People v. Whittenberg*, 2019 IL App (1st) 163267, ¶ 4. We therefore remand the cause to the circuit court to allow defendant to file a motion raising the alleged errors regarding the application of presentence incarceration credit against various monetary assessments. See, e.g., *Loggins*, 2019 IL App (1st) 160482, ¶ 131; *Whittenberg*, 2019 IL App (1st) 163267, ¶ 6.

¶ 21 CONCLUSION

¶ 22 Appeal is dismissed in part; remanded in part.