2019 IL App (4th) 180159-U

NO. 4-18-0159

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 15, 2019
Carla Bender
4th District Appellate
Court, IL

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JOHN J. DIGIOVANNA,	)	No. 15CF374
Defendant-Appellant.	)	
	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Holder White and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not improperly consider a factor inherent in the offense to aggravate defendant's sentence.

(2) The trial court did not err at the hearing on a motion to reconsider sentence by refusing to consider evidence of defendant's postsentencing conduct in mitigation.

(3) This court lacks jurisdiction to consider defendant's claim he was denied the effective assistance of counsel due to counsel's failure to challenge the circuit clerk's imposition of fines.

¶ 2 In February 2016, defendant, John J. Digiovanna, pleaded guilty to aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(C) (West 2014)) and failure to reduce speed (625 ILCS 5/11-601(a) (West 2014)). He was sentenced to five years' imprisonment.

¶ 3 Defendant appeals his sentence, arguing the trial court erred by (1) considering in

aggravation of his sentence a factor inherent to the offense of aggravated DUI and (2) by refusing to consider defendant's postsentencing behavior as evidence in mitigation. Defendant further contends fines assessed by the circuit clerk should be vacated, as he was denied the effective assistance of counsel when counsel failed to raise the clerk's error before the trial court. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2015, defendant was charged with two counts of aggravated DUI (625 ILCS 5/11-501(a)(1), (2), (d)(1)(C) (West 2014)), failure to reduce speed (625 ILCS 5/11-601(a) (West 2014)), and improper lane usage (625 ILCS 5/11-709(a) (West 2014)).

¶ 6 In February 2016, defendant pleaded guilty to one count of aggravated DUI (625 ILCS 5/11-501(a)(2), (d)(1)(C) (West 2014)) and failure to reduce speed. According to the factual basis for his plea, defendant, on January 10, 2015, was driving under the influence of alcohol near Illinois Route 29 and Wind Fall Lane in Sangamon County. Kayla Thompson was driving her vehicle in the same area. Defendant, driving at an unsafe speed, crossed the center line and crashed into Thompson's vehicle. Thompson was knocked unconscious. She had a broken right ankle that required surgery. Thompson's left foot was crushed. In that foot, Thompson continued to suffer swelling and pain. The collision caused a compound fracture to Thompson's right humerus bone and a crushed elbow. These injuries required multiple surgeries, which left Thompson with an 18-inch scar, 2 plates, and 12 screws. Thompson did not regain full range of motion in her right arm. In addition, Thompson's pelvis was fractured in two places. She suffered a broken rib, a broken tailbone, and a hole in the sac containing the lung. Thompson spent two weeks in the hospital. After returning home, Thompson was wheelchair-bound for

three months. Thompson was strongly medicated for approximately four months. Several hours after the accident, defendant's blood-alcohol content was tested at 0.192.

¶ 7 Defendant's sentencing hearing was held in April 2016. The presentence investigation report indicated defendant had a DUI in 2006. For that offense, he was sentenced to one year of supervision. Defendant reported he obtained an alcohol evaluation after that offense and completed the recommended treatment. At the time of the aggravated DUI, defendant was on probation for battery. He denied using illicit substances but tested positive for marijuana shortly before the sentencing hearing. The author of the report opined defendant could benefit from substance-abuse treatment.

¶ 8 The State called two witnesses, Chad Shanle and Thompson. Shanle testified, in the early morning hours of January 10, 2015, he had just gotten off work and was headed home when he saw cars in the ditches. One of the cars was on fire. Shanle exited his vehicle and approached the vehicle that was on fire and found Thompson inside. She was incoherent and unable to exit the vehicle on her own. Shanle removed Thompson from the vehicle and carried her to his truck. At that point, Thompson's vehicle "was almost fully engulfed" in flames. Thompson "was still just not really with it." She began complaining about being cold and about the pain in her arm.

¶ 9 According to Shanle, as he got Thompson to his truck, he observed defendant walk across to the opposite side of the road and toward Springfield. Shanle stopped him and asked if he was driving the other car. Defendant denied doing so. Shanle testified "we just kept him there talking until police" arrived.

¶ 10 Thompson testified she was 20 years old. She attended Illinois College.

Thompson attended one semester of college before the accident. From January until August 2015, Thompson was unable to return to college. According to Thompson, at the time of the accident, she had been becoming more independent. However, when the accident occurred, she "was back [in her] parents' house." Her parents had to do almost everything for her. Thompson suffered multiple injuries to her right arm. When the weather changed, she continued to experience pain. Her arm could not be fully straightened, and she could not fully rotate it. Thompson could not pick up a gallon of milk with her right arm. Thompson had three surgeries on her arm. Thompson's feet were "in constant pain" if she walked too much or stood too long. Before the accident, Thompson was active. She was a cheerleader for four years, and she would run around with her younger brothers. Thompson could still do those activities but not for as long as before because of the pain in her feet. Thompson also suffered a broken hip.

¶ 11 In mitigation, defendant called his stepmother, Cynthia Digiovanna. Cynthia testified she knew defendant for approximately 25 years. Defendant was "very loving, kind, [and] quiet." He was there to help whenever his father needed something. Defendant had three children, aged 15, 9, and 7. Defendant had been separated from the children's mother for over two years. In the beginning, parental responsibilities were divided equally with the parents alternating weeks, but parental responsibilities had recently fallen more to defendant. The mother worked in town and had other activities. The children tended to go to defendant's house when she was not around, even on her assigned weeks. Defendant coached some of his children's activities.

¶ 12 Cynthia believed a lengthy incarceration would have a profound effect on the children. Defendant was their main role model. He also was the main person for activities,

sports, and homework assistance. Defendant worked for the same employer for over twenty years as a journeyman electrician. The children's mother was an alcoholic.

¶ 13 Angela O'Neal, defendant's sister, testified defendant was a good father. Defendant lived with O'Neal for approximately two years so he could pay his wife and to support his children. During the separation, defendant continued to take care of his children. He took them to games and activities and helped with school. Defendant was still married to his children's mother. Defendant provided "the major share" of child-rearing. He was employed full-time and worked side jobs. Defendant worked from 6 or 7 a.m. until 3 p.m. He picked up the children from school. Defendant and his wife lived on the same street. There were several times the younger children showed up crying because their mother did not return home. Defendant's wife did not participate in the sports. She did not want to be bothered with transporting them to practices.

¶ 14 O'Neal testified the mother she shared with defendant was very sick, suffering "pre-dementia." Their mother returned home from the hospital the day before. O'Neal was concerned how a lengthy prison sentence would affect their mother. Defendant had been "trying to be the Power of Attorney for the financial part." O'Neal, however, since defendant's arrest, had to do her mother's taxes and attempt to sell their mother's house on her own. O'Neal was the "bad cop" and defendant was the one who could relate to her. O'Neal was concerned how she could take care of their mother without defendant, as she had a full-time job and a four-year-old child.

¶ 15 O'Neal was concerned she would not see her nephews if defendant's wife got custody, as defendant's wife did not have anything to do with defendant's side of the family.

O'Neal had to take care of getting school supplies and school registration for the boys. The boys' mother did not want them to participate in school activities and had not attended a parent-teacher conference in years.

¶ 16 Defendant submitted a letter of remorse. Defendant also entered a number of letters into evidence by individuals opining defendant was a devoted father and a hard worker.

¶ 17 The State recommended a sentence of six to eight years. Defendant argued for a lighter sentence, noting his family would lose a majority of its income and the main source of nurturing for the children.

¶ 18 The trial court stated the following in imposing sentence:

> "In reviewing the factors in mitigation, clearly this Court was anticipating, and certainly received, extensive evidence and argument on the impact this decision and this sentence will have on the dependents, expecting to hear—certainly hear the impact it would have on his children who are of a tender age, and—and they are clearly in desperate need of some nourishing and nurturing.
>
> I have heard the impact it would have on his mother, his siblings, and that is the factor in mitigation that this Court finds it is appropriate to consider.
>
> Then there is the evidence in aggravation and the factors in aggravation, including history of criminality, which weighs heavily on this Court.
>
> When I say these cases affect people who are otherwise law

abiding citizens, that doesn't necessarily apply to [defendant].

I have read about how well he treats his family, how well he treats his children. It is the rest of the community that I am concerned about.

Second DUI resulting in this. And by this, I am holding up for the record Exhibits 1 and 2 which show an extensively, extensively damaged vehicle, which if I could be so bold, there is a higher power up there. If there [are] angels out there for those who believe in that, I would submit that they were—despite the fact that this happened, someone has a bigger plan for Ms. Thompson in this life. I am convinced of that having seen what is before this Court right now, it was not her time to go, and I really hope you seize that opportunity in the future and take advantage.

I think you get it and I know you get it based on your testimony, but those angels and that higher power weren't ready, they sent Mr. Shanle, and for that, this right side of the room is eternally grateful, and whether you know it or not, [defendant], you should be eternally grateful, because your sentence would be much more severe than what you are about to hear is going to come from this Court today, which is still going to be a punishment that is worthy of everything that took place here.

It is also a factor in deterrent—deterrence to everyone.

Somebody who has a prior DUI, who's on probation for a battery offense and then in what has become inexplicable and hasn't been explained, hasn't been addressed, and one thing that impacts this Court immensely when crafting the appropriate sentence in these types of cases is how do you behave while all of this is pending, how do you demonstrate to the Court that you get it, and I'm not going to say that cannabis consumption is a triggering impact that's the scourge of society in any stretch of the imagination, but when you are positioned and you are positioned and you are going to come before this Court and try to demonstrate that this sort of history and criminality is not going to be continued into the future, regardless of the pressure you are under, regardless of the—what you are facing, that impacts the Court a lot as well.

Considering all of this, I do in this instance, in all of the history, significant consequences of this case, I am compelled to find that any sentence of probation would deprecate both the seriousness of this offense and would not be used to serve the public, to protect the public from further potential criminal conduct of this Defendant, to be on probation for a battery offense when this happened and then engaging in conduct such that you did while these proceedings are pending.

* * *

So then it's a question of what kind of sentence is appropriate to serve the need to deter people from future conduct such as this.

I don't think a six- to eight-year sentence is unreasonable. I certainly think it qualifies to be a range that would be appropriate, taking into consideration all of these factors.

I do accept your acceptance of responsibility. I do think it is genuine. I do hope you change, and I do consider the impact this will have on your children.

The one thing that concerns the Court is if Ms. Thompson or her family is ever going to be compensated for this, a sentence to the Illinois Department of Corrections [(DOC)] does not serve that end, and even on a question by counsel, has he contributed at all to the financial impact this has had on you, well, clearly you are asking the question and you think it is important too, but yet if I sentence him to the [DOC] is not going to allow for that, but again, that is a consequence—it is not a consequence I would raise in favor of allowing him to be on probation, continue to work and make those contributions, the other factors in aggravation outweigh those, but it does mitigate the length of the sentence this Court will impose, and in taking into consideration all of these factors, including that the sentence will be served at eighty-five

percent, this Court hereby sentences you to a five[-]year sentence in the Illinois [DOC] ***."

¶ 19 Shortly after sentencing, the clerk's fee disposition sheet was filed in this case. The sheet indicates the clerk recorded $215 in assessments on defendant: a $50 court-systems assessment, a $10 child-advocacy assessment, a $15 "ISP Op Assistance Fund" assessment, a $10 drug-court fee, a $100 "Victims Assist Fund" assessment, and a $35 "Serious Traffic Violation Fee."

¶ 20 In June 2016, defendant filed an amended motion to vacate his guilty plea and reconsider sentence. Defendant argued the trial court failed to give adequate weight to the evidence in mitigation.

¶ 21 In ruling on the motion, the trial court initially noted defendant committed the offense while on probation in another county. The court further stated the following before denying defendant's motion: "[I]n considering those factors, which the Court did, in aggravation, considering those facts, which include that the Defendant's conduct caused serious injury, that there is a history of prior delinquency and criminality, that does include the prior [DUI] offense, in addition to the fact that the Defendant was on probation at the time of this offense for a different offense."

¶ 22 Defendant filed an appeal. In March 2017, this court remanded for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016).

¶ 23 In March 2018, defendant's counsel filed a new Rule 604(d) certificate, as well as a motion to reduce defendant's sentence. In his motion, defendant alleged he had made progress toward rehabilitation. Defendant listed several advanced-level classes he completed during his

incarceration and the fact he had been entrusted as an outside grounds specialist, permitting him to be allowed outside the fence. Defendant further argued the trial court failed to fully appreciate the hardship to defendant and his family by requiring him to serve 85% of his sentence. Defendant emphasized his children had been left to fend for themselves and they received little protection or guidance. Defendant's eldest child had been petitioned in juvenile court for a substantial violation of Illinois law.

¶ 24 At the hearing, the trial court stated it recalled the evidence showed, without intervention, the injuries caused by defendant's conduct could have been substantially worse. The court emphasized defendant did not engage in an effort to assist Thompson. The court reiterated it considered the effect on defendant's dependents and made the difficult decision to sentence defendant to five years' imprisonment. The court found the sentence appropriate and denied the motion.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 A. Factor Inherent in the Offense

¶ 28 Defendant initially argues the trial court abused its discretion by considering a factor inherent in the aggravated DUI offense, causing great bodily harm, as a factor to aggravate his sentence. Defendant emphasizes language from the hearing on the original motion to reconsider, in which the trial court indicated it considered in aggravation the fact "defendant's conduct caused serious injury." Acknowledging he failed to raise this argument before the trial court and it may be considered forfeited, defendant argues the matter should be reviewed under the plain-error doctrine.

¶ 29 To preserve an alleged error for consideration on appeal, a defendant must, at trial, object to the error and raise the error in a motion after trial. *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. Issues not raised at trial and in a posttrial motion are forfeited. *Id.* Under the plain-error doctrine, however, sentencing errors may be considered for the first time on appeal "if (1) the evidence was closely balanced or (2) the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing." (Internal quotation marks omitted.) *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 26, 25 N.E.3d 1. The first step in plain-error analysis is determining whether a clear or obvious error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010).

¶ 30 A trial court, in sentencing, should not consider as a factor in aggravation an element inherent in the crime for which the defendant is to be sentenced. *People v. Saldivar*, 113 Ill. 2d 256, 267, 497 N.E.2d 1138, 1142 (1986); see also *People v. Milka*, 211 Ill. 2d 150, 184, 810 N.E.2d 33, 52 (2004) ("[A] factor implicit in the offense for which a defendant has been convicted cannot be used as an aggravating factor in sentencing for that offense, absent a clear legislative intent to allow such use of the factor."). Mention or consideration of a factor inherent in the offense during sentencing is, however, not necessarily reversible error. "[A] sentencing court need not unrealistically avoid any mention of such inherent factors, treating them as if they did not exist." *People v. O'Toole*, 226 Ill. App. 3d 974, 992, 590 N.E.2d 950, 962 (1992). Moreover, even though a factor might be inherent in the crime, "the degree to which it is present might differ from occurrence to occurrence." *Id.* (citing *Saldivar*, 113 Ill. 2d at 269). When a defendant alleges the sentencing court improperly considered an inherent factor of the offense in aggravation, a reviewing court must decide "(1) whether the alleged inherent factor can differ in

degree from occurrence to occurrence of the same crime, (2) whether the court merely mentioned or actually considered the inherent factor when sentencing, and (3) whether the inherent factor served as such a primary factor in the defendant's sentence that the court would not have imposed the same sentence if the court had not improperly considered that factor." *O'Toole*, 226 Ill. App. 3d at 992.

¶ 31 Defendant was convicted of aggravated DUI. An element of that offense is that defendant's driving while under the influence was a proximate cause of another's "great bodily harm or permanent disability or disfigurement ***[.]" 625 ILCS 5/11-501(d)(1)(C) (West 2014). In fashioning a sentence, a trial court may consider as a reason to impose a more severe sentence the fact "the defendant's conduct caused or threatened serious harm ***." 730 ILCS 5/5-5-3.2(a)(1) (West 2014).

¶ 32 We find no clear or obvious error. The record reveals the trial court did not consider the inherent factor when sentencing defendant but "merely mentioned" the inherent factor in ruling on *a posttrial motion*. The trial court's thorough and lengthy analysis of the factors in aggravation and mitigation shows the court named and discussed the application of two aggravating factors: (1) defendant's history of criminal activity (730 ILCS 5/5-5-3.2(a)(3) (West 2014)) and (2) "the sentence is necessary to deter others from committing the same crime" (730 ILCS 5/5-5-3.2(a)(7) (West 2014)). The court placed great emphasis on defendant's criminal history and the need to deter others. The court observed the accident caused by the aggravated DUI followed a previous DUI conviction. The court noted the aggravated DUI occurred while defendant was on probation. The sentencing court did not identify the first statutory aggravating factor or state defendant's "conduct caused or threatened serious harm." Under these

circumstances, the court's mere mention of the factor at the hearing on the posttrial motion does not support the finding the trial court relied on the element to aggravate defendant's sentence. Defendant has not established clear error.

¶ 33 Defendant's argument the trial court *alluded to* the initial element does not support a finding of reversible error. Again, the court did not mention the aggravating factor during sentencing and the court's comments do not indicate such consideration occurred. However, even if the court considered the factor in aggravation, such consideration would have been proper in this case. As the case law shows, even though a factor might be inherent in the crime, "the degree to which it is present might differ from occurrence to occurrence." *O'Toole*, 226 Ill. App. 3d at 992 (citing *Saldivar*, 113 Ill. 2d at 269). The commission of an offense can have various degrees of harm. *Saldivar*, 113 Ill. 2d at 269. The general assembly "clearly and unequivocally intended that this varying quantum of harm may constitute an aggravating factor." *Id.* "While the classification of a crime determines the sentencing range, the severity of the sentence depends upon the *degree of harm* caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence ***." (Emphasis in original) *Id.* In this case, the court's references to Thompson's injuries during sentencing show concern over the degree of harm rather than the fact of the harm. Thompson's injuries far exceeded the threshold for an aggravated DUI conviction. Any "allusion" thus does not equate to clear error.

¶ 34 Defendant's case law is distinguishable. In *People v. Dowding*, 388 Ill. App. 3d 936, 941, 904 N.E.2d 1022, 1027 (2009), the defendant's aggravated DUI conviction and sentence were based on the fact the defendant's commission of DUI led to someone's death (625

ILCS 5/11-501(d)(1)(F), (d)(2)(G) (West 2004)). There are no "degrees of harm" in death allowing a court to consider the injury (death) to the victim as a factor in aggravation. See *Dowding*, 388 Ill. App. 3d at 943 (indicating the trial court considered in aggravation the applicability of the serious-harm factor as "[T]he defendant's conduct in this offense caused the greatest harm there could be, that is the death of another person."(Internal quotation marks omitted)). However, degrees of harm exist in "great bodily harm or permanent disability or disfigurement" (625 ILCS 5/11-501(d)(1)(C) (West 2014)).

¶ 35 B. Postsentencing Conduct

¶ 36 Defendant next contends the trial court erroneously failed to consider his postsentencing behavior as evidence in mitigation during the new hearing on his motion to reduce sentence. Defendant, relying on *People v. Medina*, 221 Ill. 2d 394, 413, 851 N.E.2d 1220, 1230-31 (2006), argues a purpose of a motion to reconsider sentence is to allow the sentencing court to consider "newly discovered evidence ***." According to defendant, because the evidence of defendant's conduct occurred after sentencing and before the hearing on a motion to reconsider or reduce sentence, that evidence was unavailable at sentencing and could not have been discovered through due diligence and is, therefore, admissible. Defendant recognizes the Second District reached a contrary decision in *People v. Vernon*, 285 Ill. App. 3d 302, 674 N.E.2d 153 (1996), but argues *Vernon* is contrary to *Medina* and this court's decisions in *People v. Hanna*, 155 Ill. App. 3d 805, 811, 508 N.E.2d 765, 769 (1987), and *People v. Burke*, 226 Ill. App. 3d 793, 803, 589 N.E.2d 996, 999 (1992).

¶ 37 Defendant's original sentencing hearing occurred in April 2016. Because of counsel's initial failure to file a certificate in compliance with Rule 604(d), defendant, on

remand, had the opportunity to file a postsentencing motion in March 2018. Defendant argues the trial court was required to consider his conduct during the nearly two-year period between his sentencing and his second postsentencing motion to mitigate the imposed sentence.

¶ 38 In *Vernon*, the Second District considered and rejected the same argument defendant makes here. The *Vernon* defendant argued the trial court erred by not considering evidence of his behavior while he was in prison during his lengthy appeal process following a remand for compliance with Rule 604(d). *Vernon*, 285 Ill. App. 3d at 304. The Second District concluded defendant's evidence "is clearly outside that which a trial court is required to consider." *Id.* The court reasoned if the trial court were to consider such evidence, the character of motions to reconsider would be like "*ad hoc* parole hearings where the trial court would view defendant's conduct in prison and determine *** how much longer defendant should spend in prison." *Id.* The *Vernon* court concluded trial courts, when ruling on motions to reconsider sentences, should be limited to the question of whether the initial sentence was correct and should not be in the position of conducting a new sentencing hearing on evidence that did not exist when defendant was originally sentenced. *Id.*

¶ 39 Contrary to defendant's contention, *Medina* and Fourth-District precedent do not dictate a different result. In asserting *Medina* contravenes *Vernon*, defendant relies on the following language from *Medina* showing the purpose of a motion to reconsider is "to bring to the circuit court's attention changes in the law, errors in the court's previous application of existing law, and newly discovered evidence that was not available at the time of the hearing." *Medina*, 221 Ill. 2d at 413. Defendant ignores, however, *Medina*'s language that establishes the term "newly discovered evidence" does not encompass evidence of postsentencing conduct. For

example, *Medina* explicitly states "the purpose of a motion to reconsider sentence is not to conduct a new sentencing hearing ***." *Id.* What defendant proposes—allowing the trial court to consider postsentencing behavior—equates to a new sentencing hearing. In addition, the court's language noting defendant failed to identify the nature of "additional information" or "explain why it could not have been presented at the time of sentencing" (*id.*) implies the "newly discovered evidence" *existed* at the time of sentencing but was not presented. *Medina* does not suggest postsentencing conduct should be considered on a motion to reconsider or reduce sentence.

¶ 40 Similarly, Fourth-District precedent also does not contradict *Vernon*. Defendant relies on *Hanna* and *Burke* as holding a trial court may hear additional evidence when presented with a motion to reconsider sentence when the motion alleges facts outside the record that might change the trial court's conclusions. See *Hanna*, 155 Ill. App. 3d at 811. *Hanna* concerns evidence that *existed* at the time of sentencing but was not presented at sentencing. See *Id.* ("If his juvenile adjudications were uncounselled, and if the conditions of his pretrial detention were onerous, this was *known to defendant when he was sentenced*.") (Emphasis added.)). *Burke*, involving a claim defendant was unconstitutionally denied his right to be present on the hearing on his motion to reconsider sentence, merely cites *Hanna* for the proposition a trial court may hear additional evidence on a motion to reconsider. *Burke*, 226 Ill. App. 3d at 803 (quoting *Hanna*, 155 Ill. App. 3d at 812).

¶ 41 Defendant further contends this court's order to remand establishes we should consider postsentencing conduct. Defendant argues, when this court remanded for strict compliance with Rule 604(d), we granted defendant "the opportunity to file a new post-plea

motion, a new hearing on the motion, [and] a new judgment." Defendant concludes it makes no sense to grant the opportunity to file and argue a new postplea motion if defendant had to stand solely on the errors in the earlier motion to reconsider sentence.

¶ 42 This argument is unconvincing. This court remanded for the opportunity to file a new postplea motion and a hearing on that motion. This court did not remand for a new sentencing hearing.

¶ 43 We find *Vernon*'s analysis sound. As *Medina* states, "the purpose of a motion to reconsider sentence is not to conduct a new sentencing hearing ***." *Medina*, 221 Ill. 2d at 413. Asking the trial court to reopen the evidence to allow defendant to present evidence regarding his postsentencing conduct contravenes that purpose. We find no error on this ground.

¶ 44 C. Assistance of Counsel Regarding Clerk-Imposed Fines

¶ 45 Defendant next argues he was denied the effective assistance of counsel because trial counsel failed to address the unauthorized fines assessed by the circuit clerk. Defendant contends, at his sentencing hearing, the trial court did not order any fines and, postsentencing, the court did not enter a written order imposing fines. Defendant maintains counsel's failure to raise this issue in a postplea motion resulted in $215 in erroneously imposed fines. Defendant acknowledges the Illinois Supreme Court's decision in *People v. Vara*, 2018 IL 121823, ¶ 23, and its conclusion appellate courts lack jurisdiction to review the improper assessments of fines by circuit clerks. Defendant argues, however, *Vara* does not bar defense counsel from raising the issue before the trial court. Defendant further contends, because he is seeking review of counsel's effectiveness and is not asking this court "to review, modify, or vacate the fines as imposed by the clerk," *Vara* does not bar appellate review of his claim.

¶ 46 In *Vara*, our supreme court held appellate courts lack "jurisdiction to review the validity of the fines" imposed by the clerk of the circuit court. *Id.*. In reaching this conclusion, the court summarized the roles of circuit courts and clerks regarding fines, emphasizing only judges of the circuit court may impose a fine as part of a criminal sentence, the final judgment in a criminal case. *Id.* ¶ 14. In contrast, circuit clerks have no authority to levy fines, meaning any fines recorded by circuit clerks without judicial authorization are invalid and unenforceable. *Id.* ¶ 23. The *Vara* court concluded appellate courts, which are "constitutionally vested with jurisdiction to review *final judgments entered by circuit courts*[]," have no jurisdiction to review the clerical, nonjudicial act of a clerk's recording a fine. *Id.* (Emphasis added.)

¶ 47 Here, defendant attempts to circumvent *Vara* but makes no attempt to explain how framing his request into an ineffectiveness-of-counsel claim cures the jurisdictional flaw set forth in *Vara*. Despite his contention to the contrary, the record shows defendant repeatedly asks this court to vacate the fines imposed by the circuit clerk. In the conclusion section of his opening brief, defendant argues "this court should vacate the $215 of erroneously assessed fines." In his reply brief, he asks this court to vacate "the clerk-imposed" fines. This court cannot vacate a clerk-imposed fine it lacks jurisdiction to review, even in the context of an ineffective-assistance-of-counsel claim.

¶ 48 We conclude, under *Vara*, this court lacks jurisdiction to address or resolve defendant's ineffectiveness claim. See generally *People v. Lewis*, 2019 IL App (4th) 150637-B, ¶ 5 (concluding we lacked "jurisdiction to address and vacate the clerk-imposed fines in this matter").

¶ 49 III. CONCLUSION

¶ 50 We affirm the trial court's judgment. As part of our judgment, we grant the State its statutory assessment of $50 against defendant as costs of this appeal.

¶ 51 Affirmed.