

**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**

January 22, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2015 IL App (4th) 130219-U

NO. 4-13-0219

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
CARTER M. PUCKETT,	)	No. 12CF1214
Defendant-Appellant.	)	
	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Turner and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's extended-term sentence, as the 2007 conviction was valid to use to make defendant eligible for extended-term sentencing. The appellate court further vacated certain fines improperly imposed by the circuit clerk and remanded for proper imposition and clarification of fines.

¶ 2 In October 2012, the State charged defendant, Carter M. Puckett, with aggravated driving under the influence of alcohol (aggravated DUI) (625 ILCS 5/11-501(d)(2)(E) (West 2012)). That same month, defendant was found guilty after a stipulated bench trial. In December 2012, based on a prior Class X felony aggravated DUI conviction from 2007, the trial court found defendant eligible for an extended-term sentence. 730 ILCS 5/5-5-3.2(b)(1) (West 2012). Defendant was sentenced to 45 years' imprisonment and assessed certain fines and fees. In January 2013, defendant filed a motion for reconsideration of sentence. In March 2013, the

court denied the motion.

¶ 3 On appeal, defendant argues (1) he was not eligible for an extended-term sentence because his prior Class X felony conviction, a 2007 aggravated DUI, must be considered a Class 1 felony conviction for sentencing purposes; and (2) the State has no power under Illinois Supreme Court Rule 604(a) (eff. July 1, 2006) to independently appeal the imposition of fines and fees, or, in the alternative, the void-judgment rule should not be followed. We affirm defendant's conviction and sentence but vacate certain fines improperly imposed and remand for the proper imposition and clarification of fines.

¶ 4 I. BACKGROUND

¶ 5 In October 2012, the State charged defendant with aggravated DUI (625 ILCS 5/11-501(d)(2)(E) (West 2012)) for driving or being in actual physical control of a motor vehicle at a time when defendant was under the influence of alcohol, and defendant had five times previously committed violations of section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501 (West 2012)) or similar provisions in violation of section 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2012)).

¶ 6 That same month, a stipulated bench trial was held at which the following evidence was presented. On July 29, 2012, Officer Matthew Bross observed defendant cross the centerline, putting part of his vehicle into the lane of oncoming traffic, and travel in a center lane inappropriately. Officer Bross conducted a traffic stop and observed defendant exhibiting signs of alcohol intoxication. Defendant admitted consuming four beers and three shots approximately four hours prior. Defendant showed signs of impairment on standardized field sobriety tests. The officer arrested Defendant and took him to the police department, where an Intoximeter

EC/IR breath-testing instrument was properly employed. This test determined that defendant's breath contained a breath-alcohol concentration of 0.15. Upon receiving this evidence, the trial court found defendant guilty.

¶ 7 In December 2012, the trial court held a sentencing hearing. The State tendered to the trial court a certified driving abstract of the defendant. The court found defendant was eligible for extended-term sentencing because he had a prior Class X felony conviction (2007 aggravated DUI) within 10 years of the matter before the court for sentencing. 730 ILCS 5/5-5-3.2(b)(1) (West 2012). The court sentenced defendant to 45 years' imprisonment, with credit for 142 days spent in custody. Additionally, as part of the sentence, the judge stated that defendant was "required to pay the statutory fine of \$1,000.00, local anti-crime fee of \$10.00, court costs[,] \*\*\* [and] a genetic marker grouping analysis fee of \$250.00." Finally, the judge granted defendant a \$710 credit for 142 days in custody to be applied against his fines. Additional assessments were later imposed by the circuit clerk.

¶ 8 In January 2013, defendant filed a motion for reconsideration of sentence, asserting that the trial court gave too much weight to defendant's past criminal history as an aggravating factor and inadequate consideration to defendant's potential for rehabilitation and his past sentences as mitigating factors. In March 2013, at the hearing on the motion, the court found it to be clear defendant was eligible for extended-term sentencing based on the 2007 Class X felony aggravated DUI conviction. It then found the factors in aggravation and mitigation were correctly weighed and therefore denied the motion.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues (1) he was not eligible for an extended-term sentence because his prior Class X felony conviction, a 2007 aggravated DUI, must be considered a Class 1 felony conviction for sentencing purposes; and (2) the State has no power under Illinois Supreme Court Rule 604(a) (eff. July 1, 2006) to independently appeal the imposition of fines and fees, or, in the alternative, the void-judgment rule should not be followed. We address defendant's arguments in turn.

¶ 12 A. Jurisdiction To Review 2012 Sentence

¶ 13 The jurisdictional step which initiates appellate review is the filing of a notice of appeal. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). Defendant filed a timely notice of appeal after being sentenced for his 2012 aggravated DUI conviction. Ill. S. Ct. R. 606(b) (eff. Feb. 6, 2013). "Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058. The notice of appeal stated that the nature of the order appealed from was for "[c]onviction, [s]entence, and [d]enied [m]otion for [r]econsideration of [s]entence." Therefore, this court has jurisdiction to review the 2012 sentence.

¶ 14 B. Extended-Term Eligible: Forfeiture of Argument

¶ 15 On appeal, defendant limits his argument to contesting the use of his 2007 Class X aggravated DUI conviction to qualify him for the extended-term sentence imposed in this matter. The State argues that because defendant did not address this issue in his motion for reconsideration of sentence or at the sentencing hearing, this objection has been forfeited. According to Illinois Supreme Court Rule 605(a)(3)(c) (eff. Oct. 1, 2001), any issue regarding

the sentence imposed not raised in the written motion shall be deemed forfeited. However, defendant maintains that his 2007 Class X aggravated DUI conviction may not be used to establish his eligibility for extended-term sentencing because the statute he was sentenced under has since been ruled invalid, or void, by later case law. Thus, if this court accepts defendant's argument, the imposition of an extended-term sentence without statutory authority would result in a void sentence. See *People v. Peacock*, 359 Ill. App. 3d 326, 336-37, 833 N.E.2d 396, 405 (2005). A voidness claim is not subject to the rule of forfeiture and can be raised for the first time on appeal. *People v. Brown*, 225 Ill. 2d 188, 199, 866 N.E.2d 1163, 1169 (2007). Therefore, we will address defendant's assertion that the sentence imposed in this matter is void because the 2007 Class X conviction was improperly used to make him eligible for extended-term sentencing.

¶ 16 C. Use of 2007 Conviction To Qualify Defendant  
for an Extended-Term Sentence

¶ 17 Defendant contends that his 2007 Class X conviction cannot be used to qualify him for extended-term sentencing because the subsection he was charged and convicted under in 2007 (625 ILCS 5/11-501(c-16) (West 2006)) was later ruled invalid in *People v. Maldonado*, 402 Ill. App. 3d 1068, 932 N.E.2d 1038 (2010) (*Maldonado II*), due to conflicting amendments that were made to the DUI statute in 2005.

¶ 18 In *Maldonado II*, the defendant was sentenced on a Class X felony because he had at least five prior convictions for DUI. *Maldonado II*, 402 Ill. App. 3d at 1069, 932 N.E.2d at 1039. On appeal, the court looked at two public acts that amended the DUI statute that the defendant was sentenced under: Public Act 94-114 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-

501 (West 2004) (excluding Public Act 93-1093)) and Public Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2.1) (West 2004) (excluding Public Act 93-1093)).

*Maldonado II*, 402 Ill. App. 3d at 1069-70, 932 N.E.2d at 1039-40. The court concluded the two amendments irreconcilably conflicted in that Public Act 94-116 made a fifth or subsequent DUI a Class 1 felony, while Public Act 94-114 made a sixth or subsequent DUI a Class X felony.

*Maldonado II*, 402 Ill. App. 3d at 1073-74, 932 N.E.2d at 1042-43; Pub. Act 94-116 (eff. Jan. 1, 2006) (adding 625 ILCS 5/11-501(c-1)(4)); Pub. Act 94-114 (eff. Jan. 1, 2006) (adding 625 ILCS 5/11-501(c-16)). The appellate court resolved this conflict by applying the rule of lenity—where an ambiguity in a penal statute exists such that inconsistent sections are applicable to the same circumstances, the ambiguity should be resolved in favor of lenity. *Maldonado II*, 402 Ill. App. 3d at 1075, 932 N.E.2d at 1043-44. It affirmed the defendant's conviction but reduced the Class X felony DUI conviction to a Class 1 felony DUI conviction. *Maldonado II*, 402 Ill. App. 3d at 1075, 932 N.E.2d at 1044; see also *People v. Clark*, 404 Ill. App. 3d 141, 143, 935 N.E.2d 1147, 1149 (2010) (following *Maldonado II*, the court affirmed the defendant's conviction of DUI but reduced it to a Class 1 felony).

¶ 19 In 2007, defendant was charged and convicted under the same statute in *Maldonado II* that contained the conflicting language. Because the 2007 conviction is not properly before this court, we decline to address whether formal proceedings are available to vacate that conviction pursuant to *Maldonado II*. See *People v. McFadden*, 2014 IL App (1st) 102939, ¶ 44, 8 N.E.3d 429. However, we will address the impact of *Maldonado II* on the use of defendant's 2007 Class X aggravated DUI conviction to make him eligible for extended-term sentencing in this matter.

¶ 20 Initially, we note *Maldonado II*, unlike here, involved a direct appeal challenging the classification of defendant's conviction within the context of irreconcilable amendments to the DUI statute. *Maldonado II* held that when faced with a statutory ambiguity of the nature as the one in that case, the rule of lenity is to be applied. *Maldonado II* is silent as to whether the entry of a judgment of conviction against a defendant for a Class X felony is void.

¶ 21 A judgment may be void where a court has exceeded its jurisdiction. *People v. Davis*, 344 Ill. App. 3d 400, 406, 800 N.E.2d 539, 544 (2003). Thus, courts do not have discretionary authority to sentence a defendant beyond the maximum allowable sentence prescribed by the Unified Code of Corrections (Unified Code). *Id.* 800 N.E.2d at 545. Under section 5-5-3.2(b)(1) of the Unified Code (730 ILCS 5/5-5-3.2(b)(1) (West 2012)), the sentencing judge may impose an extended sentence under section 5-8-2 of the Unified Code (730 ILCS 5/5-8-2 (West 2012)) "[w]hen a defendant is convicted of any felony, after having been previously convicted in Illinois or any other jurisdiction of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts."

¶ 22 Defendant's 2007 Class X felony conviction was of record at the time of sentencing in this matter, making him eligible for an extended-term sentence. When judgment was entered for a Class X felony in defendant's 2007 case there was, pursuant to the DUI statute, a statutory basis for such a resolution. The fact that there existed another provision of the DUI statute authorizing a Class 1 felony conviction entitled defendant, had he pursued the matter in that case, to application of the rule of lenity. However, those circumstances do not make the

unchallenged Class X felony conviction void. Defendant does not assert that the court in the 2007 case lacked subject-matter or personal jurisdiction. See *People v. Davis*, 156 Ill. 2d 149, 156, 619 N.E.2d 750, 754 (1993) "(once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired)". Similarly, defendant fails to establish the court which entered judgment in the 2007 case exceeded its statutory authority. See *People v. Arna*, 168 Ill. 2d 107, 113 658 N.E.2d 445, 448 (1995) (A sentence that is not authorized by statute is void.). Because the 2007 Class X felony DUI conviction was of record and authorized by statute when entered, the trial court in this case properly considered the conviction when determining defendant's eligibility for extended-term sentencing. Thus, we affirm defendant's extended-term sentence.

¶ 23 D. Imposition of Fines

¶ 24 1. *Void-Judgment Rule*

¶ 25 In its brief, the State raised the trial court's failure to impose certain mandatory fines and noted a discrepancy in how a court-ordered fine and credits were applied by the circuit clerk. The State asks us to vacate and remand these issues for clarification and the proper imposition of fines.

¶ 26 In his reply brief, defendant contends that an appeal or cross-appeal of the imposition of fines by the State is unauthorized by Illinois Supreme Court Rule 604(a) (eff. July 1, 2006). Moreover, defendant asserts because the State did not raise the issue in the trial court, the issue is not properly before the appellate court.

¶ 27 Rule 604(a) strictly limits the circumstances under which the State may appeal a trial court's judgment. Ill. S. Ct. R. 604(a) (eff. July 1, 2006). However, the State may seek to

correct a void or partially void judgment on appeal. *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 150-52, 16 N.E.3d 13. A void judgment is one entered by a court that lacks the inherent power to make or enter the particular order involved. *Warren*, 2014 IL App (4th) 120721, ¶ 152, 16 N.E.3d 13. "A trial court is obligated to order the criminal penalties mandated by the legislature and has no authority to impose punishment other than what is provided for by statute." *Warren*, 2014 IL App (4th) 120721, ¶ 152, 16 N.E.3d 13. Therefore, the State properly pointed out the error of the trial court.

¶ 28 The supreme court held in *Arna*, 168 Ill. 2d at 113, 658 N.E.2d at 448, that the appellate court has the authority to raise an unauthorized sentencing order on its own, for an unauthorized sentence is void. See also *People v. Magnus*, 262 Ill. App. 3d 362, 365, 633 N.E.2d 869, 872 (1994) ("Defendant's [Rule 604] argument is without merit since this issue was raised *sua sponte* by the court in fulfillment of our duty to vacate void judgments."). Therefore, even if the State could not raise the issue, this court may, *sua sponte*, vacate the void sentence imposed.

¶ 29 Finally, defendant asks this court to forego the application of the void-judgment rule. "[T]he doctrine of *stare decisis* requires courts to follow the decisions of higher courts \*\*\*." *Schiffner v. Motorola, Inc.*, 297 Ill. App. 3d 1099, 1102, 697 N.E.2d 868, 871 (1998). "*Stare decisis* is a policy of the courts to stand by precedent and leave settled points of law undisturbed." *Charles v. Seigfried*, 165 Ill. 2d 482, 492, 651 N.E.2d 154, 159 (1995). As the supreme court stated, "[i]t is a well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally." *Thompson*, 209 Ill. 2d at 25, 805 N.E.2d at 1203. Based on *stare decisis* and our supreme court's continued application of the void-

judgment rule, we decline to forego such application.

¶ 30 *2. The Assessments in This Case*

¶ 31 a. Arrestee's Medical Assessments: A Fine That Must Be Imposed by the Court

¶ 32 The State points out that a mandatory \$10 arrestee's medical fine should have been judicially imposed. The record shows the circuit clerk imposed the \$10 arrestee's medical assessment in defendant's case. 730 ILCS 125/17 (West 2012). In *People v. Larue*, 2014 IL App (4th) 120595, ¶ 57, 10 N.E.3d 959, this court held the arrestee's medical fee, despite its label as a fee, was actually a fine and could not be imposed by the circuit clerk. See *People v. Fontana*, 251 Ill. App. 3d 694, 708, 622 N.E.2d 893, 904 (1993) ("the imposition of a fine is a judicial act which can be performed only by a judge"). Therefore, we vacate the \$10 arrestee's medical assessment imposed by the clerk and direct the trial court to reimpose it on remand.

¶ 33 b. Spinal-Cord-Research Assessment: A Fine That Must Be Imposed by the Court

¶ 34 The State points out that a mandatory \$10 spinal-cord-research fine should have been judicially imposed. In this matter, the court was authorized to impose a \$5 spinal-cord-research fine pursuant to 730 ILCS 5/5-9-1(c-7) (West 2012). However, the clerk imposed the \$5 spinal-cord-research assessment against defendant. The spinal-cord-research assessment has been held to be a fine by the Illinois Supreme Court. *People v. Jones*, 223 Ill. 2d 569, 599, 861 N.E.2d 967, 985 (2006). Therefore, we vacate the spinal-cord-research assessment imposed by the clerk and direct the trial court to reimpose it on remand.

¶ 35 c. Trauma-Fund Assessment: A Fine That Must Be Imposed by the Court

¶ 36 The State points out that a mandatory \$100 trauma-fund fine should have been judicially imposed. The State is correct. The record shows the circuit clerk imposed the \$100

trauma-fund assessment against defendant. 730 ILCS 5/5-9-1(c-5) (West 2012). In *Jones*, 223 Ill. 2d at 593, 861 N.E.2d at 981, our supreme court held the trauma-fund assessment to be a fine. Therefore, we vacate the \$100 trauma-fund assessment imposed by the clerk and direct the trial court to reimpose it on remand.

¶ 37 d. Traffic/Criminal Surcharges: A Fine That Must Be Imposed by the Court

¶ 38 The State points out that a mandatory \$250 traffic/criminal surcharges fine should have been judicially imposed. The record shows the circuit clerk imposed the \$250 criminal surcharge against defendant. 730 ILCS 5/5-9-1(c) (West 2012). Section 5-9-1(c) of the Unified Code provides, in relevant part: "There shall be added to every fine imposed in sentencing for a criminal or traffic offense \*\*\* an additional penalty of \$10 for each \$40, or fraction thereof, of fine imposed." 730 ILCS 5/5-9-1(c) (West 2012). In *Warren*, this court held the criminal surcharge-fund assessment was a fine. *Warren*, 2014 IL App (4th) 120721, ¶ 122, 16 N.E.3d 13. Therefore, the circuit clerk erred in imposing this fine and we vacate and remand for the trial court to reimpose the assessment. This will require the trial court to recalculate the total fines and then assess an additional \$10 for each \$40, or fraction thereof, of fine imposed. 730 ILCS 5/5-9-1(c) (West 2012).

¶ 39 e. The Drug-Court Assessment: A Fine That Must Be Imposed by the Court

¶ 40 The State points out that a mandatory \$5 drug-court-program fine should have been judicially imposed. The record shows the circuit clerk imposed the \$5 drug-court assessment against defendant. 55 ILCS 5/5-1101(f) (West 2012). In this case, despite being labeled a fee, the \$5 drug-court assessment imposed by the circuit clerk is considered a fine. 55 ILCS 5/5-1101(f) (West 2010); *Warren*, 2014 IL App (4th) 120721, ¶ 131, 16 N.E.3d 13. Given



including the three separate \$10 assessments contained therein, is a fine. *Warren*, 2014 IL App (4th) 120721, ¶ 127, 16 N.E.3d 13. Therefore, the circuit clerk improperly imposed this assessment. We vacate the \$30 juvenile-expungement-fund fine—listed as three separate \$10 charges for the Circuit Clerk Operations and Administrative Fund, State's Attorney's Office Fund, and State Police Services Fund. On remand, the trial court shall reimpose the \$30 juvenile-expungement-fund fine.

¶ 45                    h. The Court-Finance Assessments: A Fee Properly Imposed by the Clerk

¶ 46                    The State points out that a mandatory \$50 court-finance fee should have been judicially imposed. The record shows the circuit clerk imposed the \$50 court-finance assessment against defendant. 55 ILCS 5/5-1101(c), (g) (West 2012). In *Larue*, 2014 IL App (4th) 120595, ¶ 70, 10 N.E.3d 959, this court found that the clerk can properly impose a court-finance fee for each judgment of guilty or order of supervision. In this case, because defendant was found guilty, the clerk properly assessed the \$50 court-finance fee against defendant.

¶ 47                    i. The \$1,000 Court-Ordered Fine

¶ 48                    Finally, the State points out a discrepancy in how the circuit clerk applied the \$1,000 fine imposed by the judge during sentencing. The record does not indicate how the clerk applied this fine. On remand, this matter should be clarified to ensure the fine was properly applied.

¶ 49                    III. CONCLUSION

¶ 50                    For the reasons stated, we affirm the trial court's extended-term sentence as defendant's 2007 Class X felony conviction was appropriate to consider in finding defendant eligible for extended-term sentencing. Further, we vacate certain fines improperly imposed by

the circuit clerk and remand for the proper imposition and clarification of fines. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 51            Affirmed in part and vacated in part; cause remanded with directions.