2014 IL App (3d) 140225-U

Order filed December 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal Nos. 3-14-0225 and 3-14-0226
v.	)	Circuit Nos. 12-CF-301 and 10-CF-2217
	)	
FRANCISCO X. CERNA,	)	Honorable
	)	Edward Burmila, Jr.,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's bond deposit was correctly applied first to the payment of fines and court costs before any remainder would be remitted to defendant's attorneys.

¶ 2 Defendant, Francisco X. Cerna, pled guilty to two separate charges of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010); 720 ILCS 570/401(a)(2)(D) (West 2012)). At the plea hearing, defendant stipulated to street value fines totaling $28,366. Defendant's total bail deposit, $40,000, was fully applied to these fines and other court costs. Defendant assigned his bond to his attorneys, and the court

approved the assignment. Because the deposit was applied in whole to defendant's fines and costs, however, defendant's attorneys received no money from the deposit. Defendant appeals, arguing that the court erred in applying the bail deposit to his fines and costs before remitting the deposit to his attorneys. Defendant also argues that his fines were improperly calculated and imposed. We affirm.

¶ 3 FACTS

¶ 4 On October 25, 2010, defendant was charged with unlawful possession of a controlled substance with intent to deliver (2010 case) (720 ILCS 570/401(a)(2)(A) (West 2010)). Approximately three weeks later, defendant posted a bond of $10,000. On February 9, 2012, defendant was charged with another count of unlawful possession of a controlled substance with intent to deliver (2012 case) (720 ILCS 570/401(a)(2)(D) (West 2012)). Defendant again posted bond, this time in the amount of $30,000.

¶ 5 On February 6, 2014, defendant pled guilty to reduced charges in both cases. Pursuant to the plea agreement, defendant was sentenced to terms of nine and six years' imprisonment in the 2012 case and 2010 case, respectively, and ordered to pay fines and costs. At the plea hearing, the State informed the court that the total costs in the 2012 case were $30,210, which included a street value fine of $23,383. Defendant's attorney, John DeLeon, confirmed that defendant was stipulating to that street value fine. The State then informed the court that the total costs in the 2010 case were $10,060, of which $4,983 was the street value fine. Again, defense counsel affirmed that defendant was stipulating to that amount. Two written orders (one in each case), entitled "Street Value Fine and Crime Lab Fee Order," reflected the same amount for the street value fine as had been discussed by the parties and the court. The orders, signed by the trial court, were dated and filed February 6, 2014.

¶ 6 A criminal cost sheet in each case was also signed by the court and filed on February 6, 2014. On both cost sheets, an original number written in the space designated for the street value fine has been crossed off, replaced by the numbers discussed at the plea hearing and reflected in the previously discussed orders. Other amounts affected by this apparent change, such as section subtotals and final totals, have also been crossed off and replaced by new amounts. The final street value fines and cost totals reflected on the cost sheets are identical to those discussed by the parties and the court at the plea hearing. The court also reiterated all of these figures in delivering the sentence.

¶ 7 The cost sheets also show the $5-per-day credit received by defendant for time served. In the 2012 case, defendant was credited for 42 days served, and $210 was thus deducted from his total costs. This deduction resulted in a cost subtotal of $30,000. In the 2010 case, defendant was credited for 12 days served, and $60 was thus deducted from his total costs. This resulted in a cost subtotal of $10,000. Because the cost subtotals were identical to the bond posted in defendant's respective cases, each cost sheet shows a zero in the space designated for "total due or total refund." Both cost sheets were signed by the trial court and dated and filed February 6, 2014.

¶ 8 The record in each case also contains an assignment of bond deposit. On each form, defendant assigned to Gal Pissetzky "any bond deposits made by [defendant]." Both forms were signed by defendant. At the plea hearing, the court admonished defendant: "If I grant these assignments, the balance of your bail deposit that's being held by the clerk in both of these cases is going to be refunded to Mr. DeLeon at his place of business in payment of his legal services." After defendant acquiesced, the court granted the assignments, stating that "the clerk is to refund

the balance of the defendant's bail deposit to Mr. DeLeon." The court signed both assignment of bond forms, which are dated and file stamped February 6, 2014.

¶ 9 Three weeks later, in response to an apparent telephone call in which defense counsel inquired with the clerk's office regarding the whereabouts of the bond refund, the trial court conducted a hearing. Defendant claims on appeal that Pissetzky and DeLeon had no knowledge that this hearing was taking place. The entire record of the hearing is as follows:

> "THE COURT: All right. This is 10 CF 2217, 12 CF 301. Show that [Assistant State's Attorney] Vukmir is here.
>
> Show that the clerk has advised the Court that the attorney in this case, who filed a bond assignment, contacted the clerk's office asking about the whereabouts of that bond refund.
>
> Show the Court, having reviewed the record, finds that after the assessment of costs, there is no portion of the bail deposit available to be refunded to counsel.
>
> THE CLERK: Thank you, Judge.
>
> THE COURT: Okay."

¶ 10 On appeal, defendant argues that the trial court erred in applying his bail deposit to his court costs and fines rather than remitting the entire amount to his attorneys. Defendant also contends that the trial court improperly delegated to the clerk the task of assessing statutory costs and fines.

¶ 11 ANALYSIS

¶ 12 I. Application of Bail Deposit to Defendant's Fines and Court Costs

¶ 13 The disposition of the bail security following sentencing is controlled by section 110-7 of

the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-7 (West 2010)). Subsection (h) of that statute provides:

> "After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with paragraph (a)[,] the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment." 725 ILCS 5/110-7(h) (West 2010).

If a portion of the bail deposit remains after the deposit is applied to any fines or costs, the statute provides that a defendant may recoup that deposit, or assign that right to a third party:

> "When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused or to the defendant's designee by an assignment executed at the time the bail amount is deposited, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. ***
>
> At the request of the defendant the court may order such 90% of defendant's bail deposit, or whatever amount is repayable to defendant from such deposit, to be paid to defendant's attorney of record." 725 ILCS 5/110-7(f) (West 2010).

¶ 14 Our supreme court's decision in *People v. Dale*, 112 Ill. 2d 460 (1986) illustrates how the bail deposit statute operates. In *Dale*, the defendant deposited a total of $20,000 to secure his release on bond, and assigned the right to the bail deposit money to his attorney, Theodore Van Winkle. Subsequently, the court determined that the street value of the cocaine the defendant was charged with delivering was $139,200, and imposed a fine upon defendant in that amount.

The court then denied Van Winkle's motion to apply the defendant's bail deposit as payment of attorney fees, instead ordering that the deposit be applied to the fine and court costs.

¶ 15 The supreme court affirmed, holding that "an attorney that has acquired rights to the bail deposit under section 110-7(f) can receive only the amount repayable to the defendant, and the deposit, under section 110-7(h), is first subject to fines and costs." *Dale*, 112 Ill. 2d at 464.

¶ 16 Section 110-7 and *Dale* clearly control the result in the present matter. As the court found in *Dale*, section 110-7(h) dictates that the balance of a bail deposit be applied first to defendant's fines and court costs. Only when defendant "has been discharged from all obligations in the cause" is he entitled to any remainder from his bail deposit. 725 ILCS 5/110-7(f) (West 2010). And as defendant himself points out, it is well-settled in Illinois that pursuant to a valid assignment, "the assignee acquires all of the interest of the assignor in the property that is transferred and stands in the shoes of the assignor." *People v. Kleba*, 110 Ill. App. 3d 345, 366 (1982). Here the amount of bail remaining in which defendant held an interest—following the application to fines and court costs—was nil. In turn, that is all that defendant's assignee is entitled to.

¶ 17 Defendant argues that the present issue is distinct from that in *Dale* in two respects: (1) the trial court here approved defendant's assignment after the street value fines had already been assessed; and (2) the trial court never explicitly ordered that the deposit be applied to fines and court costs. Neither of these arguments is compelling. That the trial court approved the assignment of a zero sum does not change the fact that, under statute, a bail deposit must be applied to fines and court costs before being refunded. Nor does the fact that the court did not order that the bail deposit be applied to fines and court costs have any bearing on this issue. The deposit applied to fines and court costs as a matter of law; a court order to that effect would have

been redundant. A court order to any other effect would have been illegal.

¶ 18 Defendant also maintains that the costs sheets were completed and entered without defense counsel's knowledge, and that the court improperly conducted an *ex parte* hearing in which it found the refundable amount to be zero. Both of these contentions are belied by the record. The total costs, along with the amounts of the street value fines, were read in open court on the day of the plea hearing, at which defense counsel was present. Indeed, defense counsel stipulated to the street value fines before the court. The orders reflecting these amounts were signed, dated, and filed the same day. If defense counsel "[n]ever saw the fines and costs calculation sheet," the record shows that this is no fault of the court.

¶ 19 Further, while defendant maintains that the holding of an *ex parte* hearing "makes this situation even more egregious" the record shows that the "hearing" was of little substance or effect. It appears that the court merely announced what the previously filed orders had indicated: that the total refund from the bail deposit was zero.

¶ 20 II. Calculation of Fines and Costs

¶ 21 It is well-settled that the imposition of fines is a judicial act. *People v. Warren*, 2014 IL App (4th) 120721 (collecting cases). The imposition of fines by the clerk constitutes an improper delegation of judicial power. *Id*. It has been the practice of this court to remand matters for the entry of a written judicial order enumerating fines where the initial imposition of fines was improper. *People v. Hunter*, 2014 IL App (3d) 120552.

¶ 22 Defendant argues that the court here "never endeavored to determine the whereabouts of the bail deposit" and failed to "oversee how the clerk assessed the statutory costs and fines." Defendant maintains that the court only addressed the issue for the first time at the *ex parte* hearing, and that the numerous markings in the margins of the cost sheets are indicative of the

court's failure of oversight.

¶ 23 In *Hunter*, we identified a number of factors that may render the imposition of fines defective. *Hunter*, 2014 IL App (3d) 120552. In remanding the cause, we relied on the fact that "the trial court failed to either itemize the costs imposed by court order or summarize the total charges due in a written order bearing the judge's signature." *Id.* ¶ 13. We also noted that the order enumerating costs was filed at such a time that "neither defendant nor the State had an opportunity to raise any issue with respect to costs as calculated by the circuit clerk." *Id.* ¶ 16.

¶ 24 None of the concerns present in *Hunter* are present in the case at hand. The total costs were read in court, where both parties had an opportunity to raise any issues with those totals. Rather than raise an issue, defense counsel actually stipulated to the street value fines. The cost sheets reflecting those totals—and itemizing each particular fine—were then signed by the trial court and entered that same day. As discussed previously, the *ex parte* hearing consisted solely of the court reading the information reflected in the costs sheets. And while the costs sheets do contain some recalculations, the only numbers adjusted were the street value fines, along with the subtotals and totals affected by those fines. The street value fines were merely changed to reflect the correct amount, the amount to which defendant stipulated.

¶ 25 Defendant's bail deposit was correctly applied first to his fines and court costs pursuant to section 110-7 of the Code (725 ILCS 5/110-7 (West 2010)), and the original imposition of those fines and court costs was properly pursuant to a written judicial order. Therefore, we must affirm the decision of the trial court.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Will County is affirmed.

¶ 28 Affirmed.