

**NOTICE**  
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2011 IL App (4th) 090852-U

Filed 10/27/11

NO. 4-09-0852

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
BLANE C. WARREN,	)	No. 08CF1910
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Knecht and Justice Pope concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* 1) The record does not indicate that the trial court considered a victim-impact statement from defendant's previous unrelated case, and therefore, we find no error.
- 2) Defendant is entitled to *per diem* credit toward his fines.
- 3) This court is without jurisdiction to review the circuit clerk's imposition of late and collection fees, as those fees were imposed after the notice of appeal was filed.

¶ 2 I. BACKGROUND

¶ 3 In June 2009, defendant, Blane C. Warren, entered an open plea of guilty to one count of unlawful possession of a controlled substance, a Class 4 felony. 720 ILCS 570/402(c) (West 2008). At defendant's sentencing hearing, the State requested the trial court take judicial notice of (1) defendant's 2006 conviction for driving under the influence of alcohol (DUI) in Champaign County case No. 04-CF-1052, a charge stemming from defendant's involvement in a two-vehicle

accident wherein the other driver was killed, and (2) the victim's impact statement filed at the sentencing hearing in that case.

¶ 4 The trial court sentenced defendant to five years in prison and imposed certain fines, fees, and court costs. In imposing sentence, the trial court stated:

"One of the things that the Court must consider is whether the Defendant is a danger to the community. The Defendant was involved in a situation in which an individual was killed, and he subsequently pleaded guilty to driving under the influence in that particular circumstance."

¶ 5 Defendant timely filed a *pro se* "motion in arrest of judgment," which his attorney refiled as a motion to reconsider sentence. The motion alleged defendant's sentence was excessive and the trial court failed to consider certain factors in mitigation. The court denied defendant's motion. This appeal followed.

## ¶ 6 II. ANALYSIS

### ¶ 7 A. Consideration of Prior Conviction and Victim's Impact Statement

¶ 8 Defendant first argues that the trial court erred by considering a victim-impact statement from defendant's unrelated case when imposing defendant's sentence in this case. Defendant admits he failed to preserve this issue for appeal by failing to object during the sentencing hearing and failing to include the issue in his postsentencing motion. Nevertheless, defendant argues, this court may address his argument pursuant to the plain-error doctrine. Alternatively, defendant contends his attorney rendered ineffective assistance by failing to object. Because the court did not err, there is no need to consider either defendant's plain-error or ineffective-assistance-

of-counsel argument.

¶ 9 Here, the trial court properly considered defendant's criminal history, which included his conviction for DUI, in its determination of the appropriate sentence. 730 ILCS 5/5-5-3.2(a)(3) (West 2008) (the trial court may consider whether the defendant has a history of prior delinquency or criminal activity as a factor in aggravation in imposing a sentence). The court made no mention of the victim's impact statement during sentencing. The court noted the fact of the prior offense and the death that was caused by defendant's actions only in connection with a determination of defendant's dangerousness to the community. The court could have considered this same information as that which failed to deter defendant from committing further criminal acts. Moreover, absent an indication that incompetent evidence was actually considered in imposing the sentence, it is presumed that the trial court disregarded it, unless the record discloses evidence to the contrary. *People v. Strait*, 116 Ill. App. 3d 110, 114 (1983).

¶ 10 We are unpersuaded that any error occurred in the trial court's consideration of defendant's prior criminal record. While defense counsel should have objected to consideration of the prior victim's impact statement, the record cannot be read to indicate that the court gave it any consideration at all. Therefore, no prejudice can be ascertained, as prejudice is a necessary component of a determination of ineffective assistance of counsel, defendant's claim must fail. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶ 11 B. Credit for Fines

¶ 12 Defendant argues he was entitled to a \$15 credit for time spent in the Champaign County jail prior to his release on bond. The State agrees both that he was entitled to a \$15 credit and the trial court erred in not awarding it. We accept the State's concession and remand this cause

with directions to amend the sentencing judgment to reflect an award of credit toward the amount due on defendant's fines by reason of his three-day period of pretrial incarceration.

¶ 13 C. Clerk's Assessment of Late Fee and Collection Fee

¶ 14 Finally, defendant argues that the circuit clerk had no authority to impose a \$98.40 late fee and a \$226.32 collection fee in connection with the fines assessed against him. While we agree with the State that such fees are authorized by statute, we question whether we have jurisdiction to review the imposition of those fees, as they could not have been imposed until 30 days after the entry of the judgment, at the earliest (see 725 ILCS 5/124A-10 (West 2008)), presumably at a time after the notice of appeal had been filed. Therefore, the primary question for the purpose of this appeal is not whether the circuit clerk had jurisdiction or the authority to impose the late and collection fees. Instead, the issue that must be resolved first is whether this court has jurisdiction to consider whether those fees were properly imposed. Indeed, in this case, the fees were not imposed until after the notice of appeal was filed.

¶ 15 Defendant claims we have jurisdiction to review the issue because the late and collection fees are "part and parcel" of the final judgment, and were therefore implicitly included in the notice of appeal, despite the fact that the fees were not imposed until June 23, 2010, seven months after the November 9, 2009, notice of appeal was filed. At the same time, defendant argues the circuit clerk was without authority to impose the fees because she did so after the notice of appeal was filed, or after the circuit court had lost jurisdiction of the case.

¶ 16 On the other hand, the State claims this court is without jurisdiction to review the propriety of the late and collection fees, as they are not part of the final judgment. These fees instead, according to the State, are costs associated with the collection of the amount of the

judgment; they are not part of the judgment themselves and are not costs associated with the prosecution of the criminal case.

¶ 17 We agree with defendant that fines and fees entered at the time of sentencing are consequences of a defendant's conviction and thus are part of the sentencing judgment. However, we do not agree that any fees or fines imposed as a consequence of not timely paying the amounts set forth in the judgment are part of the criminal judgment for appeal purposes. In other words, we disagree that the imposition of any late fee, or the like, "increase[s] the severity of the original judgment." The late and collection fees are not part of the criminal judgment, but rather, are consequences for not timely paying the criminal judgment. See *Glens of Hanover Condominium Ass'n v. Chiaramonte*, 159 Ill. App. 3d 287, 292 (1987) (the plaintiff condominium association had a claim for postjudgment attorney fees incurred by it in its collection action against defendant owner, however, it was required to bring a separate action to recover them if defendant did not pay).

¶ 18 The trial court ordered that all fines were to "be paid in equal monthly installments to the Champaign County circuit clerk (within one hundred eighty (180) days)" from July 27, 2009, or by January 25, 2010. The notice of appeal in this case was filed on November 9, 2009. The manner in which fines can be collected and in which late fees may be assessed are defined by statute.

¶ 19 A court may enter an order of withholding to collect a fine due from a defendant. 730 ILCS 5/5-9-4 (West 2008). If defendant defaults on his payment, he may be held in contempt and imprisoned for nonpayment if the court finds an intentional refusal to pay. 730 ILCS 5/5-9-3(b) (West 2008). A default in payment may also be collected by any means authorized for the collection of money judgments rendered on behalf of the State, such as civil process. 730 ILCS 5/5-9-3(e) (West 2008). Additionally, if defendant fails to pay the required amount by the required time, the

clerk of the court may add late fees and collection fees to any unpaid fines. 725 ILCS 5/124A-10 (West 2008).

¶ 20 These statutory sections governing the collection of the fines imposed upon a defendant's criminal conviction and sentencing are considered separate proceedings and may be conducted in the manner prescribed by Part 8 (wage deductions) of Article XII (enforcement of judgments) of the Code of Civil Procedure (735 ILCS 5/12-801 through 12-819 (West 2008)). See 730 ILCS 5/5-9-4 (West 2004). As part of the State's collection efforts, the clerk of the court is authorized to impose late fees and collection fees to any unpaid balance in order to compensate for costs incurred in those collection efforts. However, collection efforts may not begin before 30 days after the entry of the final judgment of conviction.

¶ 21 In this case, any late and collection fees imposed were not assessed until after the notice of appeal was filed. As a reviewing court, we have no jurisdiction over any action taken in the circuit court after the notice of appeal has been filed. *People v. Jake*, 2011 Ill. App. (4th) 090779, ¶ 24, 2011 WL 3587470; see also *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 177 (2011) (If the appellant wanted to contest the award of postjudgment interest, she was required to amend her notice of appeal or file an additional notice of appeal incorporating the issue, which she did not do; therefore, the appellate court lacked jurisdiction to consider the issue); and *Mitchell v. Atwood Enterprises, Inc.*, 253 Ill. App. 3d 475, 478 (1993) ("We find that the employer's January 21 notice of appeal was not effective to give us jurisdiction over any of the matters that the trial court decided after that date.") Additionally, should it be necessary, the State would be required to bring a separate collection proceeding to recover the amounts outstanding from defendant. Presumably, defendant could challenge the propriety of those amounts at that time as well. Or, if

defendant wishes to challenge the amounts imposed as a result of his failure to pay the court-ordered fines and fees, he must do so in a separate civil proceeding, as those assessments may not be challenged in the criminal case. *Jake*, 2011 Ill. App. (4th) 090779, ¶ 23, 2011 WL 3587470.

¶ 22

### III. CONCLUSION

¶ 23

For the foregoing reasons, defendant's sentence of incarceration for a period of five years is affirmed. This case is remanded for the purpose of awarding defendant three days' credit for time served prior to sentencing. As part of our judgment, we award the state its \$75 statutory assessment against defendant as costs of this appeal.

¶ 24

Affirmed as modified and remanded with directions.