

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).

2016 IL App (3d) 140528-U

Order filed September 2, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0528
)	Circuit No. 06-CF-829
JOSE L. SANCHEZ,)	
Defendant-Appellant.)	Honorable Sarah F. Jones, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held:* Fines that were imposed as part of defendant's original sentence were void because they were not reimposed at defendant's new sentencing hearing.

¶ 2 After granting the petition for postconviction relief filed by defendant, Jose L. Sanchez, the trial court ordered that a new sentencing hearing be held. On appeal, defendant argues that the fines imposed should be vacated because they were not ordered by the trial court at

resentencing. We remand with directions that the trial court vacate any fines assessed against defendant.

¶ 3

FACTS

¶ 4

Defendant was arrested on July 24, 2005, and charged with aggravated battery with a firearm. (720 ILCS 5/12-4.2(a)(2) (West 2004)). On April 9, 2006, while he was released from custody on bond, defendant was again arrested and charged with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2006)) and unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(2) (West 2006)). Following a jury trial, defendant was found guilty of aggravated discharge of a firearm and unlawful possession of a firearm. In a separate proceeding, defendant was found guilty of aggravated battery with a firearm.

¶ 5

On August 16, 2007, a joint sentencing hearing was held. The trial court sentenced defendant to 11 years' imprisonment for aggravated discharge of a firearm and 3 years' imprisonment for unlawful possession of a firearm, to be served concurrently. The trial court also sentenced defendant to 19 years' imprisonment for aggravated battery with a firearm, to be served consecutively with his other two sentences. The trial court ordered defendant to pay two \$15,000 fines—one for aggravated battery with a firearm and the other for aggravated discharge of a firearm.

¶ 6

On direct appeal, we reversed defendant's conviction for aggravated battery with a firearm and remanded for a new trial. *People v. Sanchez*, 392 Ill. App. 3d 1084, 1086-87 (2009). We affirmed defendant's convictions for aggravated discharge of a firearm and unlawful possession of a firearm. *Id.* at 1098. We also found that defendant was entitled to a presentence incarceration credit of \$2465 against his \$15,000 fine for aggravated discharge of a firearm. *Id.*

On remand, the State entered a *nolle prosequi* regarding the aggravated battery with a firearm charge, and the trial court dismissed the case.

¶ 7 On July 18, 2011, defendant filed a postconviction petition arguing that his conviction for aggravated battery with a firearm, which was reversed by the appellate court and ultimately dismissed, was considered at his sentencing hearing for aggravated discharge of a firearm and unlawful possession of a firearm. Defendant argued that his sentence should be vacated and a new sentencing hearing be held without consideration of his conviction for aggravated battery with a firearm. The petition was summarily dismissed by the trial court. On appeal, we reversed the summary dismissal and remanded for further postconviction proceedings. *People v. Sanchez*, 2013 IL App (3d) 110834-U.

¶ 8 Counsel was appointed. Defendant filed an amended postconviction petition arguing that the trial court improperly considered his conviction for aggravated battery with a firearm when sentencing him on his other charges. In his prayer for relief, defendant requested that the court grant him a new sentencing hearing and a reduced sentence. On March 27, 2014, the trial court entered a written order “grant[ing] the defendant’s request for a new sentencing hearing.” A docket entry also dated March 27, 2014, states: “Court *** grants defendant’s Amended Petition for Post-Conviction Relief and request for a new sentencing hearing.” The trial court ordered the probation department to prepare an updated presentence investigation report.

¶ 9 On June 26, 2014, defendant’s new sentencing hearing was held. The trial court sentenced defendant to 11 years’ imprisonment for aggravated discharge of a firearm. The following exchange then occurred:

“THE DEFENDANT: I have a few more arguments. I’m requesting to get \$5 credit towards any fines?”

THE COURT: That will be given to you, [defendant], when he calculates the costs, okay. Anything else?

THE DEFENDANT: Yes. Can the bond money be returned?

THE COURT: No. Returned to whom?

THE DEFENDANT: To the surety.

THE COURT: That will be taken for fines and costs, [defendant], okay?

THE DEFENDANT: Okay.”

¶ 10 On July 8, 2014, defendant filed a “Motion for Reduction of Sentence,” requesting that the court reduce his sentence in light of certain mitigating factors. A hearing was held that same day. The trial court denied defendant’s motion. The State noted that the trial court previously failed to resentence defendant on the charge of unlawful possession of a firearm. After hearing arguments, the trial court sentenced defendant to 3 years’ imprisonment for unlawful possession of a firearm, to be served concurrently with his 11-year sentence for aggravated discharge of a firearm. The following exchange occurred:

“MR. EWANIC: ***. Defendant had some questions as to presentence incarceration and his credit. He was fined quite a significant amount of money on this case.

Based on the records I have I can’t tell if he ever received the \$5 a day credit.

THE COURT: He shall have it today.”

¶ 11 The trial court ordered that defendant receive a \$5-per-day presentence incarceration credit for the period from April 9, 2006, through July 8, 2014—a total of 3031 days. The prosecutor stated that defendant posted bond in the amount of \$17,500 and that \$5625 in court

fees were assessed against defendant. The prosecutor stated that after applying the presentence incarceration credit to defendant's applicable fines, the surety would be entitled to a refund in the amount of \$11,875. The trial court entered a written sentencing order reflecting its sentence of imprisonment and the presentence incarceration credit. The written order did not impose any fines. A notice of appeal was filed that same day.

¶ 12 A "Financials" document generated by the circuit clerk's office which was dated September 3, 2014—approximately two months after the filing of the written order and the notice of appeal—appears in the record. The document shows that the following assessments were imposed on August 16, 2007: (1) \$1750 "Bond 10% Charge," (2) \$125 "Clerk Filing Fee," (3) \$15 "Document Storage," (4) \$15 "Automation," (5) \$30 "States Attorney," (6) \$25 "Court Services / SE," (7) \$50 "Court Systems," (8) \$7939 "Fine," (9) \$3590 "Criminal Surcharge," (10) \$1436 "Victims Fund-Fine," (11) \$10 "Arrestee's Medical," (12) \$5 "Drug Court Fee 1," and (13) \$10 "Drug Court Fee 2." The foregoing assessments totaled \$15,000, and the "Financials" sheet indicated all had been paid.

¶ 13 ANALYSIS

¶ 14 Defendant argues that the fines imposed against him should be vacated because they were improperly imposed by the circuit clerk. Specifically, defendant contends that the fine he was ordered to pay at his first sentencing hearing was vacated when the trial court ordered a new sentencing hearing after granting his postconviction petition. Defendant argues that because no fine was imposed by the trial court at his second sentencing hearing, the fines reflected on the clerk's cost sheet should be vacated.

¶ 15 We agree that the fines imposed against defendant are void and must be vacated. "A 'fine' is a pecuniary punishment imposed as part of a sentence on a person convicted of a

criminal offense.’ ” *People v. Jones*, 223 Ill. 2d 569, 581 (2006) (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002); quoting *People v. Despenza*, 318 Ill. App. 3d 1155, 1157 (2001)). The trial court ordered a \$15,000 fine at defendant’s initial sentencing hearing. However, the trial court subsequently granted defendant’s postconviction petition and ordered a new sentencing hearing. We hold that the order granting a new sentencing hearing had the effect of vacating defendant’s prior sentence, including the fine. The trial court imposed no new fines at the new sentencing hearing. Accordingly, any remaining fines from the original sentence are void, as they were vacated by the trial court’s order for a new sentencing hearing. See *People v. Bernard*, 2014 IL App (2d) 130924, ¶ 10 (“A vacated judgment is nullified, canceled, and void.”).

¶ 16 Therefore, we remand this cause to the trial court with directions to vacate all the charges currently assessed against defendant that are fines. After vacating all fines, the trial court should issue a refund to the surety on defendant’s bond if any further refund is due. We recognize that the trial court appeared to believe that the originally-imposed fines remained in effect after resentencing when it applied the presentence incarceration credit. If the court has already issued a refund to the surety in accordance with its calculation of the presentence incarceration credit, there may be little, if any, additional amount that is refundable to the surety.

¶ 17 CONCLUSION

¶ 18 We remand with directions to vacate all fines assessed against defendant, as said fines were not ordered upon resentencing. We also direct the trial court, after vacating the fines, to issue a refund to defendant’s surety if any additional refund is due.

¶ 19 Remanded with directions.

¶ 20 JUSTICE WRIGHT, dissenting.

¶ 21 The court's written sentencing order following postconviction relief did not order defendant to pay any financial consequences as part of his sentence. However, the circuit clerk's office has the authority to collect certain costs. For the convenience of the reader, I have itemized the costs I believe the circuit clerk properly collected from defendant's bond in this case as follows: (1) \$1750 "Bond 10% Charge" (725 ILCS 5/110-7(f)); (2) \$125 "Clerk Filing Fee" (705 ILCS 105/27.1a(w)); (3) \$15 "Document Storage" (705 ILCS 105/27.3c(a)); (4) \$15 "Automation" (705 ILCS 105/27.3a(1)); (5) \$30 "States Attorney" (55 ILCS 5/4-2002)); and (6) \$25 "Court Services/SE" (55 ILCS 5/5-1103)). These authorized costs total \$1960.

¶ 22 Yet, absent a specific court order from the sentencing judge, the clerk is without authority to include fines in the tally sheet. Hence, I conclude the following fines could not be collected by the circuit clerk without a court order: \$50 for the "Court Systems" fine; \$1436 for the "Victims Fund-Fine;" \$3590 for the "Criminal Surcharge;" \$10 for the "Arrestee's Medical;" \$5 for the "Drug Court Fee 1;" \$10 for the "Drug Court Fee 2;" or the discretionary amount of \$7939 representing a "Fine."

¶ 23 I would be remiss if I did not emphasize that the fines set forth above are mandated by statute to be imposed by the sentencing judge following a felony conviction. Consequently, the trial court has now deprived the prosecution of significant revenue by ignoring mandated fines that should have been paid in full by this defendant directly from bond. Instead, these significant fine amounts must now be returned to defendant. The erroneous omission is attributable to the court, rather than the circuit clerk who appears to me to have been acting in good faith.

¶ 24 I respectfully dissent because I would reduce the amount for court ordered "costs" to a total of \$1960 and respectfully I would not remand the matter back to the trial court.