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2016 IL App (3d) 140588-U

Order filed September 6, 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. 3-14-0588
KENNETH JACKSON,)	Circuit No. 14-CF-246
Defendant-Appellant.)	Honorable Robert P. Livas, Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's failure to include manner of payment and time period for payment in restitution order warranted remand for amendment of that order.

¶ 2 Defendant, Kenneth Jackson, appeals from his conviction for criminal damage to government supported property. On appeal, defendant does not challenge his conviction, nor does he challenge the substance of his sentence. Instead, defendant argues only that the trial court's order for restitution failed to comply with section 5-5-6(f) of the Unified Code of Corrections (Code) in that it did not include a fixed period of time for payment of the restitution

and did not prescribe a manner for its payment. See 730 ILCS 5/5-5-6(f) (West 2014). We agree, and remand the matter so the court may amend its order accordingly.

¶ 3

FACTS

¶ 4

The State charged defendant by indictment with criminal damage to government supported property (720 ILCS 5/21-1.01(a)(1) (West 2014)). The indictment alleged that defendant caused damage not exceeding \$500. Defendant pleaded guilty to the charged offense on April 23, 2014.

¶ 5

On June 25, 2014, the trial court sentenced defendant to a term of four years' imprisonment. In addition, the court entered an order for restitution. That order read, in full: "The defendant having been sentenced by th[e] Court [illegible] a judgment for restitution is taken in the amount of 456.00 in favor of Housing Authority of Joliet." At no point in its written orders or its oral pronouncement of the sentence did the trial court address the manner or time for payment of that restitution.

¶ 6

Defendant filed a motion to reconsider sentence the following day. The motion did not raise the trial court's failure to specify a manner or time for payment of restitution, nor did the parties or the court address that issue at the ensuing hearing. The trial court denied the motion.

¶ 7

ANALYSIS

¶ 8

On appeal, defendant argues that the trial court's order for restitution was insufficient in that it failed to set a fixed time period for payment of restitution, as well as a manner in which restitution should be paid. As a remedy, defendant urges that the matter be remanded so that the trial court may amend the order to include those terms. The State concedes that the restitution order was insufficient, but argues that no relief should be granted because defendant has forfeited

the issue. Defendant acknowledges that he has forfeited the issue, and requests that we analyze the issue under the plain error doctrine.

¶ 9 At the outset of our analysis, we accept the State's concession that the trial court's restitution order was deficient. The record makes clear that at no point did the trial court set a fixed time period for the payment of the restitution, nor did it indicate whether defendant would be allowed to pay the restitution in installments. Section 5-5-6(f) of the Code requires that a trial court include both of these items in a restitution order. 730 ILCS 5/5-5-6(f) (West 2014). Moreover, the record also confirms that defendant has forfeited this issue by failing to preserve it by making a contemporaneous objection and raising the issue in a postsentencing motion.

¶ 10 The plain error doctrine allows a reviewing court to address otherwise-forfeited contentions of error if either: (1) the evidence was closely balanced; or (2) the error was so serious that it affects the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). For an error to be deemed plain error under the second prong of the doctrine, it must rise to the level of structural error. *People v. Thompson*, 238 Ill. 2d 598, 608-09 (2010). "An error is typically designated as structural only if it necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt or innocence." *Id.* at 609.

¶ 11 Despite defendant's arguments to the contrary, the present issue clearly does not qualify under either prong of the plain error doctrine. The first prong is inapplicable, as the terms of a restitution order bear no relation to the evidence of the underlying offense. Moreover, the lack of a fixed date for payment of restitution and a manner of payment are no more than technical details, not even approaching the level of structural error contemplated in *Thompson*.

¶ 12 Though defendant has not shown that the trial court committed plain error, we will nevertheless ignore his forfeiture and address the merits of his argument. Our supreme court has frequently reminded us of

“the familiar proposition[s] that waiver and forfeiture rules serve as an admonition to the litigants rather than a limitation upon the jurisdiction of the reviewing court and that courts of review may sometimes override considerations of waiver or forfeiture in the interests of achieving a just result and maintaining a sound and uniform body of precedent.” *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 33.¹

¶ 13 We find that defendant’s argument presents a particularly appropriate situation for such forgiveness. Defendant takes no issue with the amount of restitution he was ordered to pay, and does not argue that the restitution order should be vacated. Instead, he simply requests that the matter be remanded so that he knows when his payment is due and whether he is allowed to make that payment in separate installments. The State itself would benefit from allowing such corrections. Without a set due date for the restitution, the State will not be able to seek collection fees in the event that defendant does not pay. *People v. Jones*, 2015 IL App (3d) 130601, ¶ 11 (“Because the court did not set a fixed time for payment of restitution, the circuit clerk’s imposition of a collection fee *** is void.”).

¶ 14 In reaching this conclusion, we recognize that our supreme court has also made clear that the rule allowing reviewing courts to ignore forfeiture does not “nullify standard waiver and

¹This idea that a reviewing court may address the merits of an issue notwithstanding waiver has been applied with equal force in civil and criminal cases. *E.g.*, *People v. Normand*, 215 Ill. 2d 539, 544 (2005) (addressing forfeited issue after noting that “the rule of waiver is an admonition to the parties and not a limitation on the jurisdiction of this court”). The court has referred to this idea as a “ ‘judicial economy’ rationale for evading forfeiture[.]” *People v. Hauschild*, 226 Ill. 2d 63, 73 (2007).

forfeiture principles.” *Jackson*, 2012 IL 111928, ¶ 33. More pointedly, the court has said: “[T]hat principle is not and should not be a catchall that confers upon reviewing courts unfettered authority to consider forfeited issues at will.” *Id.*; see also *People v. McCarty*, 223 Ill. 2d 109, 159-60 (Freeman, J., concurring in part and dissenting in part, joined by Kilbride, J.) (arguing that the rule allowing courts to ignore waiver should only be applied in those limited circumstances where it is necessary to reach a just result or maintain a uniform body of precedent). The error in question here, however, is both clear and easily correctable. Moreover, forgiving the forfeiture in this case allows us to reach a just result, namely, allowing defendant to satisfy his debt obligations and helping to ensure that the Housing Authority of Joliet receives the money it is due.

¶ 15

CONCLUSION

¶ 16

The matter is remanded for the circuit court of Will County to amend defendant’s restitution order.

¶ 17

Remanded.