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2016 IL App (3d) 140717-U

Order filed December 16, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0717
	)	Circuit No. 12-CF-700
RYAN E. BECK,	)	Honorable
Defendant-Appellant.	)	David A. Brown, Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* We vacate the fines imposed by the circuit clerk. In addition, there is no violation of the one-act, one-crime rule where the trial court entered a single judgment of conviction and sentence.

¶ 2 Defendant, Ryan E. Beck, appeals his conviction and sentence arguing: (1) the circuit clerk improperly assessed fines against him, and (2) the trial court violated the one-act, one-crime rule. We vacate the fines imposed by the circuit clerk, but otherwise affirm.

¶ 3 **FACTS**

¶ 4 Following a July 31, 2014, bench trial, the trial court found defendant guilty of unlawful possession with intent to deliver 1 gram or more but less than 15 grams of heroin (720 ILCS 570/401(c)(1) (West 2012)), and the lesser offense of simple possession of less than 15 grams of heroin (720 ILCS 570/402(c) (West 2012)).

¶ 5 On September 12, 2014, the trial court entered three written orders. The first order denied defendant's motion for new trial. The second order entered a judgment of conviction against defendant based on the trial court's finding of guilt for the greater charge of unlawful possession with intent to deliver 1 gram or more but less than 15 grams of heroin. The trial court did not enter a judgment of conviction for the lesser charge of simple possession of heroin. The third order sentenced defendant to a six-year term of imprisonment for unlawful possession with intent to deliver. No sentence was imposed for simple possession of heroin. The trial court also imposed a \$2000 drug assessment, a \$100 laboratory fee, a \$250 DNA fee, and a \$100 Violent Crime Victims Assistance Fund fine.

¶ 6 A cost sheet entitled "Case Transactions Summary" and dated November 11, 2014, appears in the record. The transactions summary does not bear a judicial signature. The following relevant assessments and descriptions appear on the transactions summary: (1) \$25 "Drug Traffic Prevention Fund"; (2) \$18 "Pill & Drug Disposal Fund"; (3) \$4.88 "Spinal Cord fee"; (4) \$15 "State Police Operation Assistance Fund"; (5) \$10 "State Police Services Fund"; (6) \$50 "Court Usage"; (7) \$30 "Criminal Child Advocacy Center" (8) \$4.75 "Drug Court Fund"; and (9) \$10 "Medical Costs Fund."

¶ 7 ANALYSIS

¶ 8 I. Fines

¶ 9 First, defendant argues that this court should vacate the fines improperly assessed against him by the circuit clerk. “ ‘Because the imposition of a fine is a judicial act, and the circuit clerk has no authority to levy fines, any fines imposed by the circuit clerk are void from their inception.’ ” *People v. Wade*, 2016 IL App (3d) 150417, ¶ 10 (quoting *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56). Just as a void order may be attacked at any time, an appellate court can address a forfeited argument that a circuit clerk acted beyond its authority in imposing a fine. *People v. Gutierrez*, 2012 IL 111590, ¶ 14 (citing *People v. Shaw*, 386 Ill. App. 3d 704, 710-11 (2008)). Upon review, we find that the following fines were imposed by the circuit clerk and are therefore void:

- (1) \$25 “Drug Traffic Prevention Fund” (*People v. Johnson*, 2015 IL App (3d) 140364 (appendix);
  - (2) \$18 “Pill & Drug Disposal Fund” (*Id.*);
  - (3) \$4.88 “Spinal Cord fee” (*People v. Jones*, 223 Ill. 2d 569, 599-600 (2006));
  - (4) \$15 “State Police Operation Assistance Fund” (*People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31);
  - (5) \$10 “State Police Services Fund” (*People v. Bell*, 2012 IL App (5th) 100276, ¶ 42);
  - (6) \$50 “Court Usage” (*People v. Smith*, 2013 IL App (2d) 120691, ¶ 21);
  - (7) \$30 “Criminal Child Advocacy Center” (*People v. Jones*, 397 Ill. App. 3d 651, 660 (2009));
  - (8) \$4.75 “Drug Court Fund” (*Johnson*, 2015 IL App (3d) 140364, ¶ 9);
- and

(9) \$10 “Medical Costs Fund” (*Larue*, 2014 IL App (4th) 120595, ¶ 57).

We vacate the fines imposed by the circuit clerk. We do not remand the cause for the reimposition of said fines. See *Wade*, 2016 IL App (3d) 150417, ¶ 13; *People v. Carter*, 2016 IL App (3d) 140196, ¶ 51. We uphold the remaining assessments listed on the transactions summary because they are fees properly imposed by the circuit clerk. See *People v. Hible*, 2016 IL App (4th) 131096, ¶ 14 (circuit clerk may levy fees).

¶ 10 In reaching this conclusion, we reject the State’s argument that the record is insufficient to establish error. Specifically, the State contends that the transactions summary fails to establish when the assessments were imposed and who imposed the fines. We find the record is clear that the trial court did not impose the fines defendant now challenges in its oral judgment, the signed judgment order, or at any time.

¶ 11 II. One-Act, One-Crime

¶ 12 Next, defendant argues that this court should vacate defendant’s unsentenced “conviction” for simple possession of heroin under the one-act, one-crime rule. Under the one-act, one-crime rule, a defendant may not be convicted of multiple offenses based on the same physical act. *People v. Almond*, 2015 IL 113817, ¶ 47. The one-act, one-crime rule is violated when a defendant is convicted of more than one offense and the offenses are carved from the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). Because defendant was only convicted of the greater offense of unlawful possession with intent to deliver heroin, we find that there is no violation of the one-act, one-crime rule.

¶ 13 A “ ‘[c]onviction’ means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.” 720 ILCS 5/2-5

(West 2012). It is the trial court's entry of judgment and imposition of a sentence which constitutes a conviction. *People v. Woods*, 193 Ill. 2d 483, 487-89 (2000).

¶ 14 In the present case, the trial court found defendant guilty of both charges. However, the court only entered a judgment of conviction and imposed a sentence for the greater offense of unlawful possession with intent to deliver. There is neither a judgment of conviction nor a sentence imposed for the trial court's finding of guilt for the simple possession charge. As such, there cannot be a violation of the one-act, one-crime rule because the trial court did not enter multiple convictions.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, we vacate the fines imposed by the circuit clerk of Peoria County and otherwise affirm the judgment of the circuit court of Peoria County.

¶ 17 Affirmed in part and vacated in part.