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2016 IL App (3d) 150348-U

Order filed July 7, 2016

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. 3-15-0348
LATISHA D. HARVEY-BRANSCUMB,)	Circuit No. 12-TR-20860
Defendant-Appellant.)	Honorable Kirk D. Schoenbein, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held:* The traffic collection fee imposed by the circuit clerk was void because it was not authorized by statute.

¶ 2 Defendant, Latisha D. Harvey-Branscumb, argues that a traffic collection fee that was assessed against her by the circuit clerk was void as the trial court did not set a date for payment of the costs and fees assessed in her case and, therefore, she was not in default. We vacate the collection fee, but otherwise uphold the judgment.

FACTS

¶ 3

¶ 4

In August 2012, defendant was charged by citation with driving while license suspended (625 ILCS 5/6-303 (West 2012)); operating a motor vehicle without displaying registration plates (625 ILCS 5/3-413(a) (West 2012)); and operating an uninsured motor vehicle (625 ILCS 5/3-707 (West 2012)). Defendant pled guilty to driving while license suspended pursuant to a plea agreement in which the State agreed to dismiss the other two counts. She was sentenced to one year of court supervision, payment of \$372 in court costs, 300 public service hours to be completed by July 14, 2013, and payment of a \$10 per month court supervision fee.

¶ 5

On July 18, 2013, the State filed a petition to revoke defendant's court supervision, arguing that defendant failed to pay the costs and failed to complete the public service hours. A hearing was held on June 17, 2014, and the parties agreed that defendant would plead guilty and admit to violating her court supervision. The court sentenced defendant to pay the costs of the proceedings and a \$75 public defender fee, as well as serve 20 days in jail. The court issued a written order, which included the same sentencing information. The order did not include a time for payment and no other monetary assessments were issued.

¶ 6

A payment order is also included in the record, though it is unsigned by the court. The payment order was dated and filed June 17, 2014, and stated that defendant was ordered to appear on June 17, 2014, at the courthouse to set up a payment agreement. The payment order further stated that if defendant did not appear to set up a payment agreement or did not comply with the payment agreement, a warrant may be issued. The payment order includes a box that states, "unsigned copy given to defendant." The box is not checked. The record includes a cost payment sheet signed by the clerk of the circuit court on July 16, 2015. The sheet itemizes costs totaling \$510.90, including a "Traffic Collection Fee" for \$117.90.

¶ 7

ANALYSIS

¶ 8

On appeal, defendant argues that the \$117.90 traffic collection fee should be vacated because she was not in default of any monetary judgment and, therefore, the collection fee was not authorized by statute. Because we find that the circuit clerk did not have authority to impose the collection fee as no due date for payment was set by the trial court, we agree.

¶ 9

Section 5-9-3(e) of the Unified Code of Corrections (Code) states:

"An additional fee of 30% of the delinquent amount is to be charged to the offender for any amount of the fine, fee, cost, restitution, or judgment of bond forfeiture or installment of the fine, fee, cost, restitution, or judgment of bond forfeiture that remains unpaid after the time fixed for payment of the fine, fee, cost, restitution, or judgment of bond forfeiture by the court." 730 ILCS 5/5-9-3(e) (West 2012).

¶ 10

This court recently held that when a circuit clerk imposes a collection fee where the trial court has not set a fixed date for the payment of the defendant's monetary assessments, the collection fee is not authorized by section 5-9-3(e) and must be vacated. *People v. Jones*, 2015 IL App (3d) 130601, ¶ 11. Stated another way, though a circuit clerk has the authority to impose fees upon a defendant, because the Code requires that the monetary assessments "*remain[] unpaid after the time fixed for payment,*" (emphasis added) the clerk exceeded its statutory authority where it assessed a collection fee when no fixed time for payment had been set. 730 ILCS 5/5-9-3(e) (West 2012); see *Jones*, 2015 IL App (3d) 130601, ¶ 11.

¶ 11

Here, the trial court never included a date for payment when assessing the fees and costs, either orally or in a written order. Though the record includes a payment order that was prepared by the clerk, it was not signed by the court and it does not appear that a copy was ever given to

defendant. The record further includes a payment sheet signed by the clerk a year later assessing a traffic collection fee. Because no date for payment was set, the collection fee was not authorized by statute and the clerk was not permitted to assess such a fee. The traffic collection fee is therefore void and must be vacated.

¶ 12 In coming to this conclusion, we reject the State's contention that the traffic collection fee may not be attacked as void because the void sentence rule was abolished by the Illinois Supreme Court in *People v. Castleberry*, 2015 IL 116916. In abolishing the void sentence rule in *Castleberry*, the supreme court stated that " 'a circuit court is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority.' " *Id.* ¶ 19 (quoting *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 530 (2001)). Stated another way, " 'because circuit court jurisdiction is granted by the constitution, it cannot be the case that the failure to satisfy a certain statutory requirement or prerequisite can deprive the circuit court of its "power" or jurisdiction to hear a cause of action.' " *Id.* ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 30, citing *Steinbrecher*, 197 Ill. 2d at 539-32).

¶ 13 Though circuit courts have general jurisdiction conferred by the constitution, *circuit clerks* do not. The clerk is a nonjudicial member of the court and is "purely a ministerial officer." *People v. Tarbill*, 142 Ill. App. 3d 1060, 1061 (1986). As stated above, circuit clerks do have authority, pursuant to statute, to impose fees (*Jones*, 2015 IL App (3d) 130601, ¶ 9), but they do not have the power to impose fees that do not conform with statutory requirements. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14. *Castleberry's* holding, which was based on the fact that circuit court jurisdiction is derived from the constitution, thus cannot apply to unauthorized actions by the circuit clerk, whose only power comes from the statute.

¶ 14

CONCLUSION

¶ 15 The traffic collection fee imposed by the circuit clerk is vacated. The judgment of the circuit court of Peoria County is otherwise affirmed.

¶ 16 Affirmed in part and vacated in part.

¶ 17 JUSTICE WRIGHT, dissenting.

¶ 18 I respectfully dissent. Significantly, the record contains one order properly signed by the trial court directing defendant to pay \$372, including a \$75 public defender fee. This order was entered on September 14, 2012. The amount of \$372 has not been reduced to a judgment by court order to date.

¶ 19 A subsequent, unsigned “PAYMENT ORDER” bearing the date of June 14, 2014, appears in the record. This date corresponds to the date defendant was sentenced for a violation of court supervision.

¶ 20 Defendant filed a timely notice of appeal on July 15, 2014, and now raises monetary issues related to the sentence imposed in June, 2014. For these reasons, I conclude the decision in *People v. Castleberry*, 2015 IL 116916, does not apply, as defendant has raised these financial irregularities in a timely fashion on direct appeal.

¶ 21 After defendant filed a timely appeal, it appears the circuit clerk realized the trial court failed to sign the sentencing order and brought the omission to the trial court’s attention. Consequently, without notice to either party, the trial court *sua sponte* entered an order *nunc pro tunc* on August 7, 2014, which back-dated the sentencing order. In my view, the *nunc pro tunc* order constitutes a void order because the trial court lacked jurisdiction on August 7, 2014.

¶ 22 Regardless, the unsigned “PAYMENT ORDER” bearing the date of June 14, 2014, present in this record has no legal effect and remains unsigned. This payment order was not addressed or corrected by the court on August 7, 2014.

¶ 23 I would remand this matter to the trial court for resentencing on the 2014 violation of court supervision. On this basis, I respectfully dissent.