2016 IL App (3d) 150705-U

Order filed December 14, 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. 3-15-0705 Circuit No. 12-CF-214
JOHN P. DOUGLAS,	)	
Defendant-Appellant.	)	Honorable Stephen Kouri, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice O'Brien concurred in the judgment.
Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held*: The trial court had no duty to conduct a *Krankel* hearing. We affirm defendant's conviction but vacate certain fines and fees imposed upon him.

¶ 2 The State charged defendant, John Douglas, with criminal sexual assault and aggravated criminal sexual abuse. Defendant had three attorneys represent him before sentencing. He insisted on proceeding *pro se* shortly after each attorney began working on his case. Defendant pled guilty while represented by his second attorney. The trial court sentenced him to 14½ years

in prison shortly after allowing him to proceed *pro se*. Defendant's third attorney began working on the case. Defendant filed a pleading, *pro se*, captioned as a motion for ineffective assistance of counsel and, again, urged the court to allow him to proceed *pro se*. The trial court granted defendant's request. Defendant appeals his conviction, arguing the trial court did not conduct a proper preliminary inquiry (a *Krankel* hearing (*People v. Krankel*, 102 Ill. 2d 181 (1984)) into his *pro se* allegation of ineffective assistance against his third attorney. Defendant also argues another judge should conduct the hearing on remand, and that certain fines and fees imposed upon him should be vacated. We deny defendant's *Krankel* hearing claim and vacate specified fines and fees.

¶ 3 BACKGROUND

¶ 4 Between August 2011 and January 2012, defendant knowingly committed acts of sexual penetration on K.D., a minor. K.D. is defendant's niece. She and her father lived in defendant's house. The inappropriate relationship began with defendant giving K.D. massages, which progressed to fondling, masturbation, oral sex and, eventually, vaginal intercourse. The abuse started when K.D. was 14 years old. Defendant threatened to kick K.D. and her father out of his house if she did not oblige his sexual advances. K.D. reported the assaults to the police.

¶ 5 Police contacted defendant's mother, Joyce Blodgett, and informed her they wanted to question defendant about the allegations. Defendant went to the Peoria police department with Blodgett, his stepfather, and a close friend. Defendant confessed to officers that he committed the crimes K.D. alleged. Shortly thereafter, at defendant's request, he spoke with his escort group in another interview room. He apologized and told them not to blame K.D. According to Blodgett, defendant implied that he committed the crimes.

¶ 6 Police arrested the defendant. The State charged him with one count of criminal sexual assault (720 ILCS 5/11-1.20 (West 2012)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2012); 720 ILCS 5/11-1.60(d) (West 2012)). Defendant pled not guilty and demanded a jury trial.

¶ 7 Defendant's appointed trial counsel, assistant Public Defender Colette Bailey, moved to suppress defendant's statements to the police. The trial court denied the motion. Within a week, defendant sent a letter to the trial judge requesting that Bailey be discharged from his case. The trial court discharged Bailey. In the process, defendant waived his right to counsel. The trial court admonished defendant and made an extensive inquiry into whether he could proceed *pro se* before finding that defendant freely and voluntarily made his request. Later that month, a private attorney, Gary Morris, entered an appearance on defendant's behalf. Morris moved to suppress evidence seized during a search of defendant's residence. The trial court denied defendant's motion and set the case for trial.

¶ 8 Prior to jury selection, Morris met with the assistant State's Attorney assigned to the case, Seth Uphoff, to discuss plea options. Uphoff communicated to Morris that Blodgett was going to testify and that it would be damaging to defendant's case. Morris relayed this message to defendant. Uphoff arranged for defendant and his mother to meet in the courthouse to discuss his options. Morris was not present for the meeting. Shortly after their meeting, defendant pled guilty to criminal sexual assault with the sentence capped at 14½ years and the remaining counts to be dismissed. Defendant was emotional during the hearing and broke down crying a few times. The trial court paused the proceeding each time to allow defendant to compose himself. Before signing the plea agreement, defendant asked clarifying questions in court about his sentence.

¶ 9 Before sentencing, defendant, *pro se*, filed a fitness motion and a motion to withdraw his guilty plea. He alleged in his motion to withdraw his guilty plea that Uphoff lied when he informed Morris that defendant's mother would testify that defendant had "confessed" to her. Approximately one month later, defendant filed another motion to withdraw his plea and a motion for ineffective assistance of counsel. Defendant claimed Morris never confirmed the truth of Uphoff's statement regarding his mother's testimony, that Morris was ineffective for failing to do so, and that he was entitled to withdraw his guilty plea.

¶ 10 The trial court held a hearing on defendant's motion on January 24, 2013. Defendant acknowledged that he was not certain if the fault lied with Morris and expressed his desire to proceed with Morris as counsel in spite of his motion. After the trial court—and Morris—explained to defendant that he could not retain Morris as counsel while simultaneously arguing Morris was ineffective, defendant proceeded with his ineffective assistance of counsel claim. The trial court allowed Morris to withdraw and deferred ruling on defendant's motions until after sentencing.

¶ 11 The trial court appointed assistant Public Defender Thomas Sheets to represent defendant. Sheets moved to continue defendant's sentencing hearing. The trial court granted his motion on February 21, 2013. Within a week, defendant filed several motions *pro se*, including another motion for ineffective assistance of counsel. Defendant alleged Sheets did not have enough contact with him to properly prepare for his case and Sheets was not responding to his letters and phone calls. Defendant also stated that he disagreed with Sheets' decision to request a continuance and that he would rather be in charge of making such decisions himself. Unaware of defendant's recent *pro se* filings, Sheets filed a renewed motion to withdraw defendant's

guilty plea on the grounds that when Morris told defendant his mother would testify against him, he became emotional and was not in a condition to voluntarily enter his guilty plea.

¶ 12 At the sentencing hearing, during discussions about his ineffective assistance motion, defendant expressed his desire to proceed *pro se*. The following exchange took place:

> "DEFENDANT: Yeah. My reasoning is I've tried to get ahold of him [Sheets] about the avenues I wanted to pursue in my case, and I've – – I've had trouble getting ahold of him, and I've ended up putting in some motions of my own, motions that he doesn't know on what grounds I'm trying to fight them on. I just feel like I'm – – I'm better equipped with the knowledge of what needs to be done in my case to – – to try to get a – – you know, a fair trial.
>
> THE COURT: Okay. Well, you weren't happy with Miss Bailey.
>
> DEFENDANT: No, I wasn't happy with Miss Bailey, and that's why I hired Gary Morris, and I wasn't happy with Gary Morris.
>
> THE COURT: You weren't happy with him either.
>
> DEFENDANT: No, I was not.
>
> THE COURT: And you're not happy with Mr. Sheets.
>
> DEFENDANT: It's – – it's just a matter of – – the time we did get together, we were on a different page on where we wanted to go in the case, and then afterwards I've sent him letters and tried to get ahold of him and wasn't able to get any communication. Because of the lack of communication, I ended up submitting my own motions. It's not that he's doing a bad job. He's just not there for me. I – – I feel – –."

The trial court allowed Sheets to withdraw. Defendant represented himself for the remainder of the proceeding.

¶ 13 The trial court (through another judge) denied defendant's subsequent motion to substitute judge. Once the original judge returned to the courtroom, K.D. read aloud her victim impact statement. Defendant presented no evidence in mitigation, stating that he was still attempting to withdraw his guilty plea. The trial court found K.D.'s statement "powerful" and noted defendant had a prior conviction for child pornography. 720 ILCS 5/11-20.1(a)(1) (West 2000). The trial court sentenced defendant to 14½ years, expressing that he would sentence him to "a lot more time" if the terms of the plea allowed.

¶ 14 Defendant's sentencing order is a standardized form with several labeled boxes. A box labeled "That a judgment be entered against the defendant for costs" is checked. Two boxes above that is another box labeled "That defendant pay a fine of $____". The latter box is not checked. There is also a box for a deoxyribonucleic acid (DNA) analysis fee, which is also unchecked.

¶ 15 After sentencing, the trial court considered defendant's motion to withdraw his guilty plea. Defendant declined to proceed on Sheets' version and utilized his own motion. Defendant called Morris and Blodgett to testify. Defendant argued that due to Morris's ineffective assistance, he was not in the proper state of mind to voluntarily plead guilty. Before denying defendant's motion, the trial court stated that it thought his ineffective assistance of counsel claims were "frivolous" and found that, based on the testimony, Morris never lied to defendant.

¶ 16 Approximately one week later, the circuit clerk filed a notice of appeal for defendant. Three days after that, defendant, *pro se*, filed motions entitled "Motion to Amend Withdraw of Guilty Plea," "Motion for Sentence Reduction", "Motion to Withdraw Guilty Plea", and "Motion

for Appeal". In a summary order, this court remanded defendant's appeal for the trial court to rule on his motions. The trial court appointed a public defender to represent defendant. First, Joel Brown appeared on defendant's behalf, then Kevin Lowe. Lowe filed a motion to reconsider and represented defendant at the hearing on the motion in August 2015. The trial court denied defendant's motion to reconsider.

¶ 17 Defendant filed this notice of appeal on October 6, 2015. There is a "Transactions Summary" for defendant attached to the record. A deputy circuit clerk certified that the amounts listed on the sheet were correct as of November 16, 2015, by signing and stamping it with the seal of the clerk of the circuit court. According to the summary, defendant owes $2,324.50 for a variety of assessments divided into four major categories: "Circuit Clerk Fees", "State Fees", "State Fines", and "Various County Fees".

¶ 18 The individual charges are itemized. The "Circuit Clerk Fees" are (1) a $15 "Automation Fee", (2) 25 cents to the "Circuit Clerk Oper/Adm Fund", (3) $100 in "Clerk Costs", (4) a $10 "Clerk Oper/Adm Fine", and (5) $15 for "Criminal Document Storage". The "State Fees" are (1) $250 for a "DNA Analysis Fee (After 8/12)", (2) $15 to the "State Police Merit Board", (3) $15 to the "State Police Operation Assistance Fund", (4) $10 to the "State Police Services Fund", and (5) a $207.50 "Surcharge – Lump Sum". The "State Fines" listed are (1) $100 for "Domestic Violence", (2) $500 to the "Sex Offender Investigation Fund", (3) a $100 "Sexual Assault Fine", and (4) $100 to the "Violent Crime Victims Assistance Fund". The "Various County Fees" are (1) $50 for "Court Usage", (2) $25.00 for "Criminal Court Protection", (3) $10 in "Criminal Probation Operation Fees", (4) $4.75 to the "Drug Court Fund", (5) $10 for "Drug Court Operation", (6) $70 for "Health Dept Reimbursement", (7) $10 to the "Medical Costs Fund", (8) $555 in "Sheriff Fees", (9) $2 to the "State's Attorney Automation Fund", (10) $30 in

"State's Attorney Costs", (11) $10 in "State's Attorney Juvenile Expenses", and (12) $110 for "State's Attorney Service".

¶ 19 ANALYSIS

¶ 20 Defendant argues (1) this case should be remanded for a proper *Krankel* (102 Ill. 2d 181) hearing into his *pro se* allegation that Sheets provided ineffective assistance, (2) upon remand, a different judge should conduct the hearing, and (3) various fines and fees imposed on him should be vacated. We find that defendant failed to trigger the trial court's duty to conduct a *Krankel* hearing and vacate the fines—and some fees—imposed upon him.

¶ 21 I. Defendant's *Krankel* Hearing Claim

¶ 22 We review *de novo* whether the trial court conducted an adequate inquiry into defendant's *pro se* allegation of ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 75 (2003). If a defendant does not make a valid ineffective assistance claim, he does not trigger the need for the trial court to conduct a *Krankel* hearing. *People v. Taylor*, 237 Ill. 2d 68, 75-76 (2010); *People v. Jocko*, 239 Ill. 2d 87, 93-94 (2010). It is defendant's burden to establish an ineffective assistance of counsel claim. *People v. Simpson*, 2015 IL 116512, ¶ 35. A defendant must meet established minimum requirements in order to trigger a *Krankel* hearing. *People v. Montgomery*, 373 Ill. App. 3d 1104, 1121 (2007); *People v. Ward*, 371 Ill. App. 3d 382, 431 (2007). Conclusory statements are insufficient. *People v. Munson*, 171 Ill. 2d 158, 201-02 (1996).

¶ 23 Here, defendant's remarks in open court and his written motion are insufficient to establish an ineffective assistance of counsel claim. Defendant conveyed that he was unhappy with Sheets approximately one month after Sheets was assigned to his case. Defendant said he had trouble contacting Sheets, and wanted to have control over strategic decisions. These are

sufficient grounds for the trial court to exercise its discretion to dismiss Sheets from the case and allow defendant to proceed *pro se*. See *People v. Baez*, 241 Ill. 2d 44, 105-06 (2011). They are insufficient grounds to support a claim of ineffective assistance. *People v. Ward*, 371 Ill. App. 3d at 431-34. As a matter of law, defendant did not trigger the trial court's duty to conduct a *Krankel* inquiry.

¶ 24 An unhappy client, in and of itself, does not equate to ineffective assistance. Lack of communication between trial counsel and a defendant is also not, *per se*, ineffective assistance of counsel. *People v. Lewis*, 88 Ill. 2d 129, 158-59 (1981). Furthermore, "[w]here a defendant's *pro se* posttrial ineffective assistance claims address only matters of trial strategy, the court may dismiss those claims without further inquiry." *People v. Ward*, 371 Ill. App. 3d at 433; see also *People v. Palmer*, 162 Ill. 2d 465, 476 (1994) (noting that counsel's strategic decisions are "virtually unchallengeable" in ineffective assistance claims).

¶ 25 Defendant explained to the trial court the factual basis for what he perceived to be an ineffective assistance claim against Sheets. In the process, he candidly admitted that he felt that Sheets was not actually "doing a bad job" and that he wanted to represent himself in order to make strategic trial decisions. This is not an ineffective assistance of counsel claim. It is well settled that the substance of an argument controls over its title in a pleading. *In re Parentage of Scarlett Z.-D.*, 2015 IL 117904, ¶ 64; *In re Haley D.*, 2011 IL 110886, ¶ 67. Defendant's arguments in writing and orally in court did not adequately allege Sheets was ineffective.

¶ 26 Even if we construe defendant's argument as a valid ineffective assistance claim, his assertion that the trial court never contemplated the merits of his claim is contradicted by the record. As discussed above, defendant filed his ineffective assistance motion and explained to the trial court why he was unhappy with Sheets. "We ordinarily presume that the trial judge

knows and follows the law unless the record indicates otherwise." *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996). Defendant highlights nothing on appeal suggesting the contrary. The trial court later stated that it found all of defendant's ineffective assistance claims "frivolous." Moreover, "when a defendant's *pro se* complaints of ineffective assistance are bald, ambiguous, and/or unsupported by specific facts, they come into conflict with the general rule that a defendant may not file *pro se* motions when represented by counsel." *People v. Ward*, 371 Ill. App. 3d at 432. Thus, we reject defendant's claim. Given that defendant is not entitled to remand for a *Krankel* hearing, we need not address his argument that the original trial judge is incapable of conducting one.

¶ 27 II. Defendant's Fines and Fees Arguments

¶ 28 Defendant further argues some of the fines and fees imposed upon him should be vacated. The State acknowledges that fines imposed by the circuit clerk are void, but asserts defendant forfeited any related arguments by failing to raise them at the trial level and this court now lacks the authority to vacate defendant's fines. The State cites *People v. Castleberry*, 2015 IL 116916, ¶¶ 17, 26-27, in support. Whether fines or fees were properly imposed upon a defendant is a question of statutory interpretation we review *de novo*. See *People v. Price*, 375 Ill. App. 3d 684, 697 (2007) (citing *In re Estate of Dierkes*, 191 Ill. 2d 326, 330 (2000)).

¶ 29 The State's forfeiture argument relies on an inaccurate interpretation of *Castleberry*. As this court recently stated, "*Castleberry*'s abolition of the void sentence rule *** is of no consequence to the issue of whether the fines [issued by a circuit clerk] are void." *People v. Wade*, 2016 IL App (3d) 150417, ¶ 12. This court has authority to vacate fines imposed upon the defendant by the circuit clerk. *People v. Castleberry*, 2015 IL 116916, ¶ 25. Similarly, fees imposed without proper statutory authority are void *ab initio* and may be attacked at any time.

People v. Burney, 2011 IL App (4th) 100343, ¶ 101. Finding that the State's forfeiture argument fails, we address the merits of defendant's arguments.

¶ 30 First, defendant argues that the $250 DNA analysis fee should be vacated since he already paid it. Notwithstanding its forfeiture argument, the State agrees. Defendants need not pay a DNA analysis fee pursuant to section 5-4-3(a) of the Unified Code of Corrections (730 ILCS 5/5-4-3(a) (West 2012)) if they are currently registered in the database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). When a defendant's DNA is already on file due to a previous felony conviction, ordering him to pay the fee again for another conviction is improper. *People v. Brown*, 2013 IL App (3d) 110669, ¶ 55. Accordingly, we vacate the $250 DNA analysis fee.

¶ 31 Next, defendant argues several fines should be vacated because they were imposed by the circuit clerk, citing *Castleberry* in support. Defendant also asserts that the case payment sheet indicates the circuit clerk imposed fines and fees on him after the notice of appeal was filed. Therefore, defendant reasons, the trial court lost jurisdiction to impose them. In support of his argument, defendant highlights that the cost payment sheet for the case was signed by the circuit clerk on November 16, 2015, after he filed a notice of appeal. We find the trial court's sentencing order dispositive.

¶ 32 The trial court's sentencing order did not impose any fines on defendant. Checking a box labeled "That a judgment be entered against the defendant for costs" on a standardized form did not impose any fines on defendant. See, *e.g.*, *People v. Wisotzke*, 204 Ill. App. 3d 44, 49-50 (1990). Eliminating all ambiguity, the trial court left the box labeled "That defendant pay a fine of $____" unchecked and blank. Thus, the trial court neglected to impose any fines upon the defendant. As the State concedes, if the circuit clerk imposed any fines upon the defendant, they

are void at their inception. *People v. Wade*, 2016 IL App (3d) 150417, ¶ 10. Fines are part of a criminal sentence and appellate courts have no authority to increase a sentence on appeal. *Id.* ¶ 11. Accordingly, we vacate all of the identifiable fines listed on the transaction summary.

¶ 33 We find the following fines are void and, therefore, vacated (1) $15 to "State Police Operation Assistance Fund", (2) $10 to "State Police Services Fund", (3) the $207.50 "Surcharge – Lump Sum", (4) $100 to "Domestic Violence", (5) $500 to the "Sex Offender Investigation Fund", (6) a $100 "Sexual Assault Fine", (7) $100 to the "Violent Crime Victims Assistance Fund", (8) $4.75 to the "Drug Court Fund", (9) $10 for "Drug Court Operation", and (10) $10 to the "Medical Costs Fund".

¶ 34 What remains on the transaction summary are fees. Generally speaking, the circuit clerk has authority to impose fees. See *People v. Swank*, 344 Ill. App. 3d 738, 747-48 (2003).

¶ 35 Defendant argues the 25 cents "Circuit Clerk Oper/Admin Fund" and $10 "State's Attorney Juvenile Expenses" assessments should be vacated. Specifically, defendant asserts that these are fees which are drawn from fines. In this instance, he claims, no fines were imposed upon the defendant and, therefore, corresponding fees should not be imposed. We agree.

¶ 36 The 25 cents fee must be drawn from drug court fines. 55 ILCS 5/5-1101(f) (West 2012). Likewise, the juvenile expenses fee is drawn from a fine. 730 ILCS 5/5-9-1.17(a)-(b) (West 2012). No fines were imposed upon the defendant. Since the fines from which the fees are supposed to be drawn were never imposed by the trial court, the corresponding fees collapse under their own weight. In essence, they are self-vacating.

¶ 37 Defendant also argues the $50 "Court Usage" assessment was imposed upon him pursuant to section 5-1101 of the Counties Code (55 ILCS 5/5-1101 (West 2012)) and is a fine that is mislabeled a fee by some courts. An assessment which does not seek to compensate the

State for costs incurred in prosecuting is a fine, not a fee—whatever its label. *People v. Graves*, 235 Ill. 2d 244, 254 (2009) (citing *People v. Jones*, 223 Ill. 2d 569, 600 (2006)). Defendant clearly used the court while the State prosecuted him. There is no reasonable argument to claim otherwise. Thus, the court usage assessment is a justifiable fee to impose upon defendant and it remains.

¶ 38 Lastly, defendant argues we should vacate the $70 "Health Dept Reimbursement" and the $110 "State's Attorney Service" assessments. Specifically, defendant asserts that he can find no authority for these assessments in the Illinois Compiled Statutes or the Peoria County Code of Ordinances. The State acknowledges that it is "unclear" from what authority these assessments are derived. We do not know whether the assessments are fines or fees. Either way, they are void. If they are fines, obviously, they are void. *People v. Castleberry*, 2015 IL 116916, ¶ 25. If they are fees, there is no clear statutory authority to impose them and they are also void. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 101. Therefore, we vacate these assessments as well.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we affirm in part and vacate in part the judgment of the circuit court of Peoria County.

¶ 41 Affirmed in part, vacated in part.

¶ 42 JUSTICE WRIGHT, concurring in part and dissenting in part.

¶ 43 I agree with the majority's decision with the exception of the holding resolving the fine and fee issue presented for the first time on appeal.

¶ 44 In this concur and dissent, I stress that the majority is taking aim at a target that does not exist. Specifically, since a clerk cannot impose fines, I conclude a clerical assessment of punitive

"fines" has no impact on the validity of the 2013 sentencing order that requires payment of an undetermined amount of court costs.

¶ 45 It is undisputed that the sentencing order at issue requires the payment of costs only. Defendant wishes for this court to affirm that thought. In fact, on appeal, defendant has not challenged certain costs totaling $740 that the clerk added after the entry of the 2013 order.

¶ 46 The unchallenged court costs include a $100 Clerk Filing Cost, a $555 Sheriff's Cost, a $25 Court Security Cost, a $15 Clerk Automation Cost, a $15 Clerk Document Storage Cost, and a $30 States Attorney's Fee. Defendant's approach is entirely consistent with the guidance provided by this court in *People v Johnson*, 2015 IL App (3d) 140364, where we identified the handful of true court costs a circuit clerk may impose without a more specific directive from the court.

¶ 47 I write separately to emphasize one point that has been overlooked in this case and many other cases now pending in this court. This defendant has not been compelled to pay any portion of the $740 in costs he seems willing to pay when the time is right. While defendant now objects to the duplicate DNA fee included in the clerical records, this issue will be easily resolved one day by looking at the 2013 order signed by the judge. Here, the 2013 sentencing order does not have paragraph "N" marked requiring defendant to submit to the DNA collection process or pay the associated fee.

¶ 48 As I have previously expressed in other dissents, I celebrate the *Castleberry* decision. I also take this opportunity to confess that, like other judges, I have incorrectly vacated fines incorporated by a circuit clerk after concluding the clerk's actions created a "void" sentence. Following *Castleberry*, I resolve to be more attentive.

¶ 49 In this separate offering, I repeat, once again, that I strongly agree a circuit clerk has no authority to impose a fine without a prior directive from the court. Yet, the analysis undertaken by the majority in this appeal is based on a logical premise that I cannot accept. The majority's decision to vacate every punitive amount included in the clerk's data entries, presumes the clerk's calculations have been approved and adopted by the trial court. This is simply untrue.

¶ 50 The court's sentence in this case, while erroneously low, is specifically limited to "costs." The fact remains, *no one* is attempting to enforce the 2013 court order. Instead, defendant has asked this court to review clerical data entries that are not part of the court order.

¶ 51 The conflict between the 2013 court order and the clerk's subsequent data entries will *only* become ripe for our review once a judge erroneously orders this defendant to pay more than the *court's* original sentencing order required. When this happens, defendant will have an opportunity to appeal the court's order compelling payment above allowable costs. At that point, I will happily expend judicial resources to correct the monetary wrong.

¶ 52 For now, adjusting the unpaid balance for clerically over-estimated costs, *not yet reviewed or ratified by the trial court*, is as senseless as calculating the proper amount of Kentucky windage when aiming at clay pigeons that will never reach the sky. The court order stands. It is an exercise in futility to reduce the unpaid balance of court costs that this defendant may never be compelled to pay.

¶ 53 At the risk of sounding flippant, this is exactly the type of issue the *Castleberry* decision allows this court to bypass. Thankfully, we are no longer required to audit clerical records regarding unpaid balances that the trial court has neither ratified nor had a chance to review for accuracy.

¶ 54 For these reasons, I respectfully dissent.