2016 IL App (4th) 140301-U

NOS. 4-14-0301, 4-14-0630 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 6, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ANTONIO T. PETTIUS,	)	No. 10CF1879
Defendant-Appellant.	)	
	)	Honorable
	)	Holly F. Clemons,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court (1) affirmed the trial court's dismissal of defendant's postconviction petition where he forfeited review of his plea of guilty, and (2) vacated certain fines and fees and remanded for the trial court to impose certain fines.

¶ 2 In August 2012, defendant, Antonio T. Pettius, filed a petition for postconviction relief, alleging his attorney provided ineffective assistance of counsel by failing to investigate occurrence witnesses and obtain squad-car video with respect to his arrest for driving on a revoked license and resisting a peace officer. Following a third-stage postconviction hearing, the trial court denied defendant's petition.

¶ 3 Initially, defendant appealed, asserting (1) defense counsel provided ineffective assistance of counsel, (2) his guilty plea was entered into involuntarily and was therefore void, and (3) several fines and fees imposed by the circuit clerk should be vacated. However, during the pendency of this appeal, defendant filed a motion to abandon his ineffective-assistance-of-

counsel argument. We therefore address only the latter two issues. For the following reasons, we conclude defendant forfeited review of his guilty plea but vacate certain fines and fees, and we remand for the trial court to impose certain fines.

¶ 4 I. BACKGROUND

¶ 5 In November 2010, the State charged defendant by information with (1) resisting a peace officer, a Class 4 felony (720 ILCS 5/31-1(a-7) (West 2010)); and (2) driving while license revoked, a Class 4 felony (625 ILCS 5/6-303(a) (West 2010)).

¶ 6 In April 2011, prior to beginning defendant's trial, the trial court admonished defendant as to the nature of the charges and possible penalty. The court noted both charges were Class 4 felonies, punishable by a possible term of imprisonment of one to three years' imprisonment followed by a one-year period of mandatory supervised release (MSR). The court then added defendant was eligible for an extended term of three to six years' imprisonment.

¶ 7 Prior to *voir dire*, however, defendant indicated he wished to change his plea. The trial court admonished defendant regarding the rights he would give up by entering a plea of guilty. The following exchange then occurred.

> "THE COURT: Is your plea of guilty voluntary? And by that I mean are you doing this of your own free choice?
>
> DEFENDANT: Yes, ma'am.
>
> THE COURT: Has anyone forced or threatened you in any way in order to make you plead guilty?
>
> DEFENDANT: No, ma'am.
>
> THE COURT: Have you had sufficient time to speak with your attorneys ***?

DEFENDANT: Yes, ma'am."

¶ 8 After hearing a factual basis, the trial court accepted defendant's open plea on both charges.

¶ 9 A. Defendant's *Pro Se* Motion To Withdraw his Guilty Plea

¶ 10 In May 2011, prior to sentencing, defendant filed a *pro se* motion to withdraw his guilty plea. Therein, defendant asserted, generally, his attorney provided ineffective assistance of counsel. Defendant also attached a letter from his attorney, dated April 19, 2011, informing defendant he could either direct his attorney to file a motion to withdraw his plea or file a *pro se* motion to withdraw his plea. According to the letter, defendant told his attorney in court that he wanted to withdraw his plea, but he asked his attorney not to tell the trial court of his intentions. The court refused to consider the motion, as defendant was represented by counsel and, therefore, could not file a *pro se* motion.

¶ 11 In July 2011, the trial court sentenced defendant to 70 months' imprisonment for driving on a revoked license, to run concurrently with a sentence of 3 years' imprisonment for resisting a peace officer. The court also sentenced defendant to pay various fines and fees.

¶ 12 Following defendant's sentencing hearing, defendant's attorney filed a notice of appeal on defendant's behalf. However, because he did not file a motion to withdraw his plea prior to doing so, this court subsequently dismissed defendant's appeal. *People v. Pettius*, No. 4-12-0119 (April 12, 2012).

¶ 13 B. Postconviction Proceedings

¶ 14 In August 2012, defendant filed a petition for postconviction relief. Therein, he alleged he received ineffective assistance of counsel and his plea of guilty was therefore not

voluntary. However, he did not raise any arguments with respect to the MSR period he received. Defendant's postconviction counsel amended the petition but retained defendant's arguments.

¶ 15 In March 2013, the State filed a motion to dismiss. Therein, the State conceded defendant was entitled to an evidentiary hearing regarding his ineffective-assistance-of-counsel arguments. At the same time, the State asked the trial court to dismiss the portions of the petition wherein defendant claimed his plea was involuntary where the court's admonishments at the time of the plea proved otherwise.

¶ 16 The trial court ordered the motion to dismiss taken with a third-stage evidentiary hearing. Following the hearing, the court granted the State's motion to dismiss, finding the record failed to support defendant's contentions he (1) received ineffective assistance of counsel, or (2) entered his plea involuntarily due to counsel's ineffectiveness.

¶ 17 Defendant filed two appeals from two different trial court orders arising out of the same case, which we have docketed as Nos. 4-14-0301 and 4-14-0630. However, defendant raises no issues as to the trial court's order in No. 4-14-0630, so we will restrict our review to the issues raised with respect to the court's order in No. 4-14-0301.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues (1) his guilty plea was entered into involuntarily and was therefore void, and (2) several fines and fees imposed by the circuit clerk should be vacated. Before we address the merits of the case, however, we begin by outlining the postconviction process.

¶ 20 A. Postconviction Process

¶ 21 The postconviction process consists of three stages. In the first stage, the trial court has 90 days to review the defendant's petition for postconviction relief and dismiss the

petition if it determines the claims are frivolous or without merit. 725 ILCS 5/122-2.1(a)(2) (West 2012). At that stage, our review of the court's dismissal centers on whether the defendant stated the gist of a constitutional claim. *People v. Anderson*, 375 Ill. App. 3d 121, 132, 872 N.E.2d 581, 592 (2007).

¶ 22 If the defendant's petition survives dismissal during the first stage of proceedings, the trial court dockets the petition for the second stage of proceedings. 725 ILCS 5/122-2.1(b) (West 2012). At this stage, the defendant may seek the appointment of counsel who may amend the petition as necessary to address the defendant's claims of error. 725 ILCS 5/122-4 (West 2012). Additionally, the State may file a motion to dismiss the petition. 725 ILCS 5/122-5 (West 2012). During the second stage of proceedings, the court must take as true "all well-pleaded facts that are not positively rebutted by the trial record." *People v. Pendleton*, 223 Ill. 2d 458, 473, 861 N.E.2d 999, 1008 (2006). If the court dismisses the defendant's petition during the second stage of proceedings, we review *de novo* whether the defendant has made a substantial showing of a constitutional violation. *Id.*

¶ 23 If the defendant's petition advances to the third stage of proceedings, the trial court holds an evidentiary hearing on the merits of the petition to determine whether the defendant has made a substantial showing of a constitutional violation. See 725 ILCS 5/122-6 (West 2012); *Pendleton*, 223 Ill. 2d at 473, 861 N.E.2d at 1008. Where credibility and fact-finding are at issue in the third stage of proceedings, our review differs from the second stage, as we will not reverse the court's order unless it is manifestly erroneous. *Id.*

¶ 24 We note the different standards of review for each stage of proceedings, in part, to highlight the inherent problem with the trial court's decision to take the State's second-stage motion to dismiss with the third-stage evidentiary hearing. Although the record in this case

demonstrates the court denied defendant's petition on the merits and made no finding as to the motion to dismiss, combining the stages has the potential to raise serious issues with respect to the court's correct application of the law.

¶ 25 Having outlined the postconviction process and the accompanying standards of review, we now turn to the merits of defendant's appeal.

¶ 26 B. Void Sentence

¶ 27 Defendant asserts the trial court failed to properly admonish him regarding the period of MSR he could receive, thus rendering his plea involuntary and, therefore, void. Defendant raises this issue for the first time on appeal.

¶ 28 Generally, any claim not raised in the postconviction petition is deemed forfeited. See *People v. Pendleton*, 223 Ill. 2d 458, 475, 861 N.E.2d 999, 1009 (2006). However, defendant asserts this issue is not forfeited because a void judgment can be attacked at any time. *People v. Davis*, 156 Ill. 2d 149, 155, 619 N.E.2d 750, 754 (1993). The central question then becomes whether the trial court's alleged failure to properly admonish defendant resulted in a void order that can be attacked at any time.

¶ 29 A judgment is void only where the trial court lacked jurisdiction to enter the judgment. *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 16, 964 N.E.2d 646. Void judgments are subject to collateral attack and, therefore, can be challenged at any time. *Id*. On the other hand, voidable judgments, which assert an error in a case where the court otherwise has jurisdiction, are not subject to collateral attack. *Davis*, 156 Ill. 2d at 155, 619 N.E.2d at 754.

¶ 30 The supreme court has recognized three elements that comprise a trial court's jurisdiction: (1) personal jurisdiction, (2) subject-matter jurisdiction, and (3) the statutory authority to render a particular judgment. *Hubbard*, 2012 IL App (2d) 101158, ¶ 21, 964 N.E.2d

646. Recently, in *People v. Castleberry*, 2015 IL 116916, ¶ 1, 43 N.E.3d 932, the supreme court abolished the void-sentence rule that comprised the third element. After submitting supplemental briefs regarding the applicability of *Castleberry*, the parties disagree as to whether *Castleberry* can be applied to the present case. Defendant asserts *Castleberry* cannot be retroactively applied to the present case. In support, defendant filed a motion to cite supplemental authority, asking us to adopt the First District's determination that *Castleberry* cannot be retroactively applied. See *People v. Smith*, 2016 IL App (1st) 140887, ¶ 30, __ N.E.3d __. However, because we conclude the judgment was not void, we find *Castleberry* and *Smith* inapplicable to the present case.

¶ 31 In support of his argument that the incorrect admonishments rendered his plea void, defendant relies primarily upon *People v. Louderback*, 137 Ill. App. 3d 432, 484 N.E.2d 503 (1985). In *Louderback*, this court held the trial court committed reversible error by not permitting the defendant to withdraw his guilty plea after the court improperly admonished the defendant as to the minimum sentence and made no mention of an MSR period. *Id.* at 436, 484 N.E.2d at 505.

¶ 32 However, *Louderback* involved a defendant's direct appeal challenging his guilty plea. *Id*. at 434, 484 N.E.2d at 504. Moreover, unlike in *Louderback*, in this case, defendant was admonished as to the MSR period and received a sentence within the range contemplated by his plea agreement. *Louderback* did not discuss whether an improper admonishment rendered the plea void, which is the question with which we are presented.

¶ 33 Defendant's reliance on *People v. Johns*, 229 Ill. App. 3d 740, 744, 593 N.E.2d 594, 597 (1992), is similarly misplaced. In *Johns*, the trial court was reversed when it imposed, following a violation of probation, a sentence that exceeded the maximum term for which the

court originally admonished the defendant he was eligible. *Id*. On appeal, the question of whether the defendant's original plea was void or voidable was not raised or addressed. Instead, the resolution was grounded in an analysis of the requirement of substantial compliance with Illinois Supreme Court Rule 402 (eff. Feb. 1, 1981).

¶ 34 Defendant further relies on *People v. Williams*, 188 Ill. 2d 365, 370, 721 N.E.2d 539, 543 (1999), for the proposition: "[i]f a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void." We find defendant's reliance on *Williams* unconvincing. In *Williams*, the supreme court determined the trial court's failure to admonish the defendant that his plea of guilty could be used against him in a later proceeding was a collateral matter that did not render his plea involuntary. *Id.* at 373, 721 N.E.2d at 543. The court was not presented with the issue of whether a plea entered following an inadequate admonishment was void when it stated, "[i]f a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void." *Id*. at 370, 721 N.E.2d at 544. Such a statement of law is inconsistent with supreme court precedent.

¶ 35 Contrary to defendant's arguments, Illinois courts have held the absence of appropriate admonishments may be erroneous, such as in *Louderback* or *Johns*, but that does not render the judgment of a circuit court void. See *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 42, 944 N.E.2d 337, 343 (2011). For example, in *Davis*, 156 Ill. 2d at 153, 619 N.E.2d at 753, the issue before the supreme court was whether the defendant's improper conviction for a lesser-included offense was void and therefore subject to attack at any time. The supreme court held, because the trial court had jurisdiction over the matter, the court's order was voidable rather than void. *Id*. at 157-58, 619 N.E.2d at 755. In several recent cases, the supreme court has repeatedly

reinforced that an order is void only where the trial court lacked jurisdiction to enter the order. See *In re M.W.*, 232 Ill. 2d 408, 414, 905 N.E.2d 757, 763 (2009); *Castleberry*, 2015 IL 116916, ¶ 11, 43 N.E.3d 932; and *People v. Thompson*, 2015 IL 118151, ¶ 31, 43 N.E.3d 984. None of those cases mention an exception for a situation in which the defendant has entered into an allegedly involuntary plea. We therefore conclude the supreme court's statement in *Williams* that an involuntary plea is void constituted nonbinding *obiter dicta*. *Williams*, 188 Ill. 2d at 370, 721 N.E.2d at 543.

¶ 36 We find further support for our conclusion in *Hubbard*, 2012 IL App (2d) 101158, ¶ 27, 964 N.E.2d 646, where the Second District rejected the defendant's reliance on *Williams*, determining the language, " '[i]f a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void,' " (emphasis omitted) constituted *obiter dicta* inconsistent with current case law.

¶ 37 In *Hubbard*, the appellate court resolved a situation analogous to the present case. The defendant in *Hubbard* filed an untimely section 2-1401 petition, asserting his guilty plea was void because the trial court's inaccurate admonishments rendered his plea involuntary. *Id.* ¶ 6. In affirming the trial court's dismissal of the defendant's untimely petition, the appellate court held the "[v]oluntariness or involuntariness of a guilty plea has no bearing on jurisdiction, so that an involuntary plea cannot render a conviction void." *Id.* ¶ 12. The appellate court reached a similar holding in *People v. Santana*, 401 Ill. App. 3d 663, 666, 931 N.E.2d 273, 278 (2010), where it concluded, "[e]ven if the trial court failed to sufficiently admonish defendant concerning MSR, the error would not vitiate the trial court's power to impose a sentence authorized by statute." Even if we were to find the plea involuntary, such a finding does not strip the trial court of the inherent authority it derives from the Illinois Constitution to hear matters of this nature.

Moreover, defendant does not argue the trial court lacked personal or subject-matter jurisdiction. Finally, the sentence imposed was within the statutorily authorized penalty for a Class 4 extended-term eligible offense; up to six years' imprisonment followed by a one year period of MSR. See 730 ILCS 5/5-4.5-45(a), (*l*) (West 2010). Thus, the trial court had the power to render the particular judgment or sentence. See *Hubbard*, 2012 IL App (2d) 101158, ¶ 21, 964 N.E.2d 646 (outlining the elements of the court's jurisdiction).

¶ 38 We therefore reject defendant's claim that his sentence is "void" because the error in this case involved the procedure surrounding the acceptance of his pleas—namely, allegedly improper admonishments—which rendered the court's order *voidable*, but not *void*, as the trial court otherwise had jurisdiction over the case.

¶ 39 Accordingly, because defendant failed to raise this issue in his postconviction petition, we conclude defendant has forfeited this issue.

¶ 40 C. Fines and Fees

¶ 41 Defendant next contests several fines and fees imposed in his case. The State concedes several of the imposed fines and fees must be vacated, and we accept the State's concession. Our review of whether defendant was properly assessed fines and fees is *de novo*. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 8, 3 N.E.3d 400.

¶ 42 As the State concedes, and we accept, the duplicative (1) $5 document-storage fee, (2) $10 automation assessment, (3) $100 circuit-clerk assessment, and (4) $25 court-security assessment imposed on count II must be vacated. See *People v. Smith*, 2014 IL App (4th) 121118, ¶ 27, 18 N.E.3d 912.

¶ 43 The State also concedes, and we accept, the (1) $50 court-finance assessment, (2) $10 arrestee's medical assessment, (3) $30 juvenile-expungement assessment, (4) $5 drug-court

assessment, and (5) $10 State Police Operations assessment were fines improperly imposed by the circuit clerk. See *Wynn*, 2013 IL App (2d) 120575, ¶ 13,16, 3 N.E.3d 400 (concluding the court-finance, juvenile-expungement, drug-court, and State Police Operations assessments were fines improperly imposed by the circuit clerk); and *Smith*, 2014 IL App (4th) 121118, ¶ 46, 18 N.E.3d 912 (concluding the arrestee's medical assessment is a fine improperly imposed by the circuit clerk). Thus, these fines must be vacated and remanded to the trial court to be properly imposed. In so doing, defendant's incarceration credit should be applied to the (1) $50 court-finance assessment, (2) $30 juvenile-expungement assessment, (3) $5 drug-court assessment, and (4) $10 State Police Operations assessment. See *Wynn*, 2013 IL App (2d) 120575, ¶ 18, 3 N.E.3d 400; see also *People v. Unander*, 404 Ill. App. 3d 884, 890, 936 N.E.2d 795, 800 (2010) (the arrestee's medical assessment is not subject to incarceration credit).

¶ 44 As a result of this change in the fines and fees to be assessed to defendant, the Violent Crime Victims Assistance assessment must also be recalculated on both counts based on the gross amount of fines levied. See *People v. Williams*, 2013 IL App (4th) 120313, ¶ 21, 991 N.E.2d 914.

¶ 45 The State also asks this court to impose fines and fees the trial court previously failed to impose. These include a criminal-surcharge fine on each count and a mandatory Driver's Education Fund fine. We decline to do so. Illinois Supreme Court Rule 604(a) (eff. Dec. 11, 2014) outlines the situations in which a State may appeal, and a challenge to the fines and fees imposed on a defendant is not presented as a basis for an appeal. The State therefore asserts a reviewing court should not be required to remedy the defendant's contentions of error with respect to fines and fees while "remaining powerless to correct other errors" by the State. However, the State overlooks a remedy it could pursue—a writ of *mandamus*—where it believes

the court has violated a mandatory sentencing requirement. See *People ex rel. Daley v. Strayhorn*, 119 Ill. 2d 331, 337, 518 N.E.2d 1047, 1050 (1988).

¶ 46 Accordingly, we vacate the (1) $5 document-storage fee, (2) $10 automation assessment, (3) $100 circuit-clerk assessment, and (4) $25 court-security assessment imposed on count II. We also vacate and remand for the trial court to impose a (1) $50 court-finance assessment, (2) $10 arrestee's medical assessment, (3) $30 juvenile-expungement assessment, (4) $5 drug-court assessment, and (5) $10 State Police Operations assessment, with defendant's incarceration credit to be credited against the (1) $50 court-finance assessment, (2) $30 juvenile-expungement assessment, (3) $5 drug-court assessment, and (4) $10 State Police Operations assessment. Finally, we remand for the Violent Crime Victims Assistance assessment to be recalculated based on the newly imposed fines.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm the trial court's order denying defendant's postconviction petition and conclude defendant forfeited review of his guilty plea. We also vacate certain fines and fees and remand for the trial court to impose certain fines. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 49 Affirmed in part and vacated in part; cause remanded with directions.