

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 140522-U

NO. 4-14-0522

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 22, 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
SIRRON M. MONROE,)	No. 14CF10
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Fines entered by the circuit clerk were improperly imposed. The improperly imposed fines are vacated and the court declines to remand the cause to allow the trial court to impose the vacated fines.

¶ 2 In January 2014, the State charged defendant, Sirron M. Monroe, by information with one count of aggravated driving with a blood alcohol concentration of 0.08 or more (count I) (625 ILCS 5/11-501(a)(1) (West 2014)); one count of aggravated driving under the influence of alcohol (count II) (625 ILCS 5/11-501(a)(2) (West 2014)); and one count of aggravated driving with a drug, substance, or compound in his breath, blood, or urine (count III) (625 ILCS 5/11-501(a)(6) (West 2014)). After a jury trial, defendant was found guilty of counts I and III. The trial court sentenced him to six years in the Illinois Department of Corrections, followed by a one-year term of mandatory supervised release. The court ordered defendant to pay a \$2,500 fine, a Violent Crime Victims Assistance Act (VCVA) fee, and a genetic marker grouping

analysis fee.

¶ 3 Thereafter, defendant was assessed additional fines and fees, including (1) a County Jail Medical Costs Fund fee, (2) a court-finance assessment, (3) a drug-court assessment, (4) a Spinal Cord Fund fee, and (5) a Trauma Center Fund fee. Defendant appeals the imposition these five assessments, arguing the circuit clerk lacked authority to impose them. We agree and vacate the fines.

¶ 4 I. BACKGROUND

¶ 5 On January 2, 2014, the State charged defendant by information with one count of aggravated driving with an alcohol concentration of 0.08 or more (count I) (625 ILCS 5/11-501(a)(1) (West 2014)); one count of aggravated driving under the influence of alcohol (count II) (625 ILCS 5/11-501(a)(2) (West 2014)); and one count of aggravated driving with a drug, substance, or compound in his breath, blood, or urine (count III) (625 ILCS 5/11-501(a)(6) (West 2014)).

¶ 6 In April 2014, the case proceeded to a jury trial. The jury found defendant guilty of counts I and III. During defendant's May 2014 sentencing hearing, the trial court sentenced defendant to six years' imprisonment. The court also ordered defendant to pay a fine of \$2,500. The written sentencing order entered at the sentencing hearing reflects a \$2,500 fine, a VCVA fee of \$50, a genetic marker grouping analysis fee of \$250, and a credit of \$660 for time served. A second docket entry from the sentencing date reads as follows:

"Disposition 01/01 Count 001 Modified Order Fee \$3696.00

Disposition: Modified/Trial Court AGG DUI/ NO VALID DL

Modified Order \$3696.00. STATE OFFENDER DNA 250.00

Status: Dispositioned & Sentenced May 12, 2014

Judge: KLAUS RICHARD P."

A "Criminal/Traffic Payment Setup" sheet from August 2014 shows 25 different fines and fees owed by defendant, totaling \$3,696.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues several fines were improperly imposed by the circuit clerk, including (1) a County Jail Medical Costs Fund fee, (2) a court-finance assessment, (3) a drug-court assessment, (4) a Spinal Cord Fund fee, and (5) a Trauma Center Fund fee.

Following submission of the briefs in this matter, this court granted defendant's motion for leave to file supplemental briefing. Subsequently, defendant filed his supplemental brief, to which the State responded by filing their supplemental brief. The supplemental briefing requires us to determine whether vacating clerk-imposed fines, then on remand directing the trial court to impose them, violates *People v. Castleberry*, 2015 IL 116916, ¶¶ 26-27, 43 N.E.3d 932 (holding absent the filing of a writ of *mandamus*, the State may not seek to increase a defendant's sentence). We vacate the fines imposed by the clerk, and we decline the State's request for remand.

¶ 10 A. Forfeiture

¶ 11 As a preliminary matter, the State argues defendant failed to raise the issue he now appeals in his motion to reconsider his sentence, thus forfeiting the issue. We disagree.

¶ 12 Fines imposed by the clerk of court are void. *People v. Hible*, 2016 IL App (4th) 131096, ¶ 9, 53 N.E.3d 319; *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959.

A void judgment is one entered without jurisdiction and can be challenged " 'at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d

95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)). Accordingly, this court has jurisdiction to address this issue for the first time on appeal.

¶ 13 B. Fines Imposed by the Circuit Clerk

¶ 14 Defendant argues the following five fines were improperly imposed by the circuit clerk: (1) a County Jail Medical Costs Fund fee, (2) a court-finance assessment, (3) a drug-court assessment, (4) a Spinal Cord Fund fee, and (5) a Trauma Center Fund fee. The State argues the record suggests the trial court, not the circuit clerk, imposed the fines at issue. On this basis, the State maintains the fines are proper. We agree with the defendant.

¶ 15 The determination of whether the circuit clerk imposed a fine against a defendant is an issue of statutory construction and is reviewed *de novo*. *People v. Warren*, 2014 IL App (4th) 120721-B, ¶ 99, 16 N.E.3d 13 (citing *People v. Gutman*, 2011 IL 110338, ¶ 12, 959 N.E.2d 621). Fines and fees are two distinct charges. A fee is a charge designed to recoup the State's expenses, while a fine " 'is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.' " *Id.* ¶ 93 (quoting *People v. Graves*, 235 Ill. 2d 244, 250, 919 N.E.2d 906, 909 (2009)). The circuit clerk can levy fees on a defendant, but only the trial court can impose fines on a defendant. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912.

¶ 16 The document entitled "Criminal/Traffic Payment Setup" is the only item in the record on appeal listing the contested assessments. The trial court, in its oral pronouncement of defendant's sentence, imposed a fine of \$2,500, directed defendant to submit genetic specimens, and ordered that defendant be given credit for time served. The court's sentencing order, entered

at the sentencing hearing, reflects a fine of \$2,500, a VCVA fee of \$50, a genetic marker grouping analysis fee of \$250, and a credit of \$660 for time served in custody.

¶ 17 We note, as pointed out by the State, the written sentencing order states, "Defendant shall pay all fines, fees and costs as authorized by statute." However, immediately following the aforementioned language, the sentencing order, consistent with the trial court's oral pronouncement, delineates specific fines as well as the amount of defendant's credit for time previously served. This specific delineation is inconsistent with the State's assertion that the language of the sentencing order somehow imposed *any* statutorily authorized fine. To the contrary, the sentencing order reflects the court's imposition of certain fines and leaves no room for the imposition of additional fines not specifically mentioned. Thus, we reject the State's argument that the sentencing order reflects the court's imposition of all statutorily authorized fines.

¶ 18 Consideration of this matter also included our review of the previously mentioned separate docket entry from the sentencing date. This additional entry fails to persuade us that the trial court, and not the clerk, imposed the contested fines. Absent from the additional entry is any indication of the presence of the parties or the court. The entry fails to specifically list any fines or corresponding amounts. Furthermore, there is no reference to the matter being called for a hearing, and the entry is devoid of language reflecting any direction from the court to the circuit clerk. We note the total of the assessments listed in the clerk's "Criminal/Traffic Payment Setup" equals \$3,696, which suggests the additional entry is a notation placed on the docket by the clerk. Apparently, following the clerk's review of the file, the clerk imposed additional fines. Thereafter, the clerk made a docket entry reflecting defendant's new payment obligation. Upon our consideration of the record as a whole, we find the fines at issue were imposed by the clerk.

¶ 19 We next examine the appropriateness of remanding this cause with directions to the trial court to impose any vacated fines. Defendant argues that to remand for imposition by the court of the clerk-imposed fines increases defendant's financial penalty at the request of the State. Defendant urges this court to depart from our practice of remanding to allow the trial court to impose fines imposed by the clerk, and instead, adopt the reasoning of the Third District in *People v. Wade*, 2016 IL App (3d) 150417. In *Wade*, after recognizing the routine post-*Castleberry* practice of remanding and directing the trial court to impose vacated fines, the court determined remanding to allow the trial court to impose vacated fines unlawfully increases a defendant's sentence. *Id.* ¶ 13.

¶ 20 The State argues *Wade* is inapplicable to the case before us. According to the State, because the trial court's written sentencing order contained language stating, "Defendant to pay all fines, fees and costs as authorized by statute," all fines authorized by statute had already been judicially imposed. Thus, the State asserts the only potential error could have been a defect in the court's delegation to the circuit clerk of the subordinate task of determining the type and amount of each fine. See *People v. Dillard*, 2014 IL App (3d) 121020, ¶ 14, 14 N.E.3d 1285 ("a sentencing judge may delegate the task of calculating the statutorily mandated minimum fines and costs to the clerk"). In the State's view, this defect is remedied by remanding to the trial court "with directions to conduct its own independent review of the clerk's payments sheet and recalculate all of the financial charges, including mandatory fines, which defendant must pay according to statute." *Id.* ¶ 15.

¶ 21 Alternatively, the State maintains that because the clerk-imposed fines effectively became part of defendant's sentence, imposition on remand by the trial court cannot constitute an increase in defendant's sentence. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437

("Because defendant's notice of appeal properly brought up his entire conviction for review, the appellate court had jurisdiction to act on void orders of the circuit clerk.").

¶ 22 We previously rejected the State's argument that the language of the written sentencing order imposed all statutorily authorized fines. This argument remains unpersuasive. As to the State's alternative argument, it is also unconvincing. According to the State, because the Illinois Supreme Court rejected the argument that a clerk-imposed fine could not be reviewed on appeal as "it was not embodied in any order of the circuit court," clerk-imposed fines are part of defendant's sentence. See *id.* ¶ 13. Thus, according to the State, imposition by the trial court of vacated clerk-imposed fines does not increase a defendant's sentence. Initially, we note *Gutierrez* predates *Castleberry*. More important, in *Gutierrez*, the supreme court addressed the question of whether a notice of appeal, which failed to challenge the \$250 public-defender fee but utilized the trial court's final judgment date as the order from which the appeal was taken, conferred jurisdiction on the appellate court.

¶ 23 The supreme court resolved the case by reasoning that the defendant's amended notice of appeal, utilizing the date of the trial court's final judgment, gave the appellate court jurisdiction to review the clerk-imposed public-defender fee. According to the court's analysis, the amended notice of appeal "properly brought up his entire conviction for review." *Id.* ¶ 14. The State appears to suggest that because under *Gutierrez*, defendant's "entire conviction" included the clerk-imposed public-defender fee, that fee became a legitimate part of defendant's financial obligations. Therefore, according to the State, allowing the trial court to impose the fines in question in no way increases defendant's sentence. We disagree.

¶ 24 As previously stated, a clerk-imposed fine is void. Therefore, any clerk-imposed fine has no legal force or effect. Such a fine is neither legally binding nor enforceable. Clearly,

under *Gutierrez*, the appellate court has jurisdiction to affirm the voidness of the act and remove it from the judgment. *Id.* ¶ 14. However, the appellate court's exercise of its jurisdiction in no way changes or legitimizes the void act. If we remand and direct the trial court to impose the vacated clerk-imposed fines, we will increase defendant's sentence. This is because once the trial court imposes a fine, it is legally binding, enforceable, and must be paid. To conclude otherwise runs afoul of *Castleberry*, 2015 IL 116916, ¶¶ 26-27, 43 N.E.3d 932 (holding absent the filing of a writ of *mandamus*, the State may not seek to increase a defendant's sentence).

¶ 25 The record shows the circuit clerk imposed a (1) \$10 arrestee's medical assessment (730 ILCS 125/17 (West 2014)); (2) \$50 court-finance fee (55 ILCS 5/5-1101(c), (g) (West 2014)); (3) \$5 drug-court assessment (55 ILCS 5/5-1101(f) (West 2014)); (4) \$5 Spinal Cord Fund fee for each count on which defendant was convicted (730 ILCS 5/5-9-1.1(c) (West 2014)); and (5) two \$100 Trauma Center Fund fees, one for each of defendant's convictions (730 ILCS 5/5-9-1.1(b) (West 2014)). Given our finding that these fines were improperly imposed by the clerk, we vacate them. In addition, based on *Castleberry*, we decline to remand the cause to allow the trial court to impose the vacated fines. See also *People v. Daily*, 2016 IL App (4th) 150588, ¶ 29.

¶ 26 Finally, the State argues that in addition to remanding for imposition of the clerk-imposed fines, we should also remand with instructions to the trial court to impose a driving under the influence equipment fee. 730 ILCS 5/5-4.5-45(e), (West 2014). We decline to do so. In our view, remanding for imposition of the additional fine would increase defendant's financial penalty at the request of the State. See *Hible*, 2016 IL App (4th) 131096, ¶ 24, 53 N.E.3d 319, (declining the State's request to add a fine that "was never imposed originally").

¶ 27

III. CONCLUSION

¶ 28 We vacate the contested fines and decline the State's request for remand. We otherwise affirm the conviction and sentence.

¶ 29 Affirmed in part and vacated in part.