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2017 IL App (3d) 150178-U

Order filed May 18, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-15-0178
v.)	Circuit No. 14-CF-529
)	
ROBERT D. LUCKETT,)	Honorable
)	David A. Brown,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Holdridge concurred in the judgment.
Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held:* (1) Counsel was ineffective for failing to object to the imposition of the Trauma Center Fund fine. (2) The State Police Services Fund and clerk operation and administration fines were properly entered by the court as part of the juvenile expungement fine. (3) Defendant was entitled to \$350 in presentence custody credit.

¶ 2 Defendant, Robert D. Lockett, appeals certain fines that were imposed as part of his sentence. Specifically, defendant alleges that: (1) his trial counsel was ineffective for failing to object to the imposition of a \$100 Trauma Center Fund fine; (2) the \$10 State Police Services

Fund and \$10 clerk operation and administration assessments should be vacated; and (3) he is entitled to presentence custody credit. Defendant does not challenge his convictions. We affirm in part, vacate in part, and remand with directions.

¶ 3

FACTS

¶ 4

On December 10, 2014, defendant was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)) and aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2014)). On March 5, 2015, he was sentenced to eight years' imprisonment for each conviction. The court ordered "that [defendant] pay fees and costs of these cases" and that "[defendant] get a \$5 a day credit against any of those fees and costs that are deemed to be fines per statute for each day that [defendant has] been in custody." The judgment order of March 5, 2015, specified presentence custody credit from August 5, 2014, until "today."

¶ 5

The court also issued a financial sentencing order directing defendant to pay certain assessments, including a Trauma Center Fund fine of \$100. The assessments defendant was required to pay were marked with an "X." The order also included a provision for the \$5-per-day presentence custody credit, which included blank spaces to write in the number of days of pretrial detention and the total monetary amount of the credit. The provision was marked with an "X," but the number of days and total amount of the credit were not included. The order also includes an "X" next to a provision titled "Juvenile Expungement Fee." The financial sentencing order was signed by the court, the State, and defense counsel.

¶ 6

Defendant filed a motion to reconsider sentence, which was denied. The motion to reconsider did not include any argument regarding the monetary assessments.

¶ 7

The record includes a cost sheet dated April 30, 2015. The cost sheet includes both a \$10 clerk operation and administration and a \$10 State Police Services Fund assessments. It does not

include the “Juvenile Expungement Fee” as listed in the financial sentencing order. Further, the cost sheet does not reference any presentence custody credit. The cost sheet is signed by the clerk, but not the court.

¶ 8

ANALYSIS

¶ 9

On appeal, defendant argues that: (1) his trial counsel was ineffective for failing to object to the \$100 Trauma Center Fund fine; (2) the \$10 State Police Services Fund and \$10 clerk operation and administration assessments were assessed by the clerk without authority; and (3) he is entitled to a \$350 presentence custody credit. The State argues that defendant has forfeited his arguments. However, the State concedes that, if not forfeited, the Trauma Center Fund fine, the State Police Services Fund assessment, and the clerk operation and administration assessment were assessed in error and must be vacated and defendant is entitled to presentence custody credit. We find counsel was ineffective for failing to object to the Trauma Center Fund fine. We further find that the State Police Services Fund and the clerk operation and administration assessments were properly assessed by the court as part of the “Juvenile Expungement Fee.” Lastly, we accept the State’s concession that defendant is entitled to \$350 presentence custody credit.

¶ 10

First, defendant argues that counsel was ineffective for failing to object, and actually acquiescing, to the \$100 Trauma Center Fund fine. To prevail on a claim of ineffective assistance of counsel, a defendant must show that: (1) counsel’s performance was deficient, and (2) such deficiency prejudiced the defendant, *i.e.*, there must be a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *People v. Domagala*, 2013 IL 113688, ¶ 36 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).

¶ 11 We find, and the State does not dispute, that counsel's performance was deficient. As stated above, the State concedes that the Trauma Center Fund fine was not applicable here. See 730 ILCS 5/5-9-1.10 (West 2014). As the fine did not apply to defendant's case, counsel was deficient for failing to object and acquiescing to its imposition by signing the financial sentencing order. Further, defendant was prejudiced by this deficient performance as, had counsel objected to the imposition of the fine, there is a reasonable probability that the fine would not have been assessed. Therefore, we find that counsel was ineffective for failing to object to the imposition of the Trauma Center Fund fine, and we vacate the fine.

¶ 12 In coming to this conclusion, we reject the State's argument that defendant cannot show prejudice because "[u]nless and until the State attempts to collect the fines and fees, defendant has not been placed in any jeopardy of having to pay that which he claims he should not." The State's argument is misplaced in the context of ineffective assistance of counsel. As stated above, when reviewing prejudice to the defendant, the question is whether the result of the proceedings would have been different. *Domagala*, 2013 IL 113688, ¶ 36 (citing *Strickland*, 466 U.S. at 694). Stated another way, ineffective assistance of counsel looks at prejudice to defendant at the time the error occurred. The fact that defendant may not have yet been impacted by the prejudicial error at the time of appeal has no bearing on the finding of prejudice.

¶ 13 Second, defendant argues that the State Police Services Fund and the clerk operation and administration assessments were incorrectly assessed by the clerk. The State confesses error, but argues that defendant forfeited review of the assessments. However, section 5-9-1.17(b) of the Unified Code of Corrections includes these two assessments as part of the \$30 juvenile expungement fine. 730 ILCS 5/5-9-1.17(b) (West 2014); see *People v. Johnson*, 2015 IL App (3d) 140364 (appendix). The court included the juvenile expungement fine in its financial

sentencing order. By including the State Police Services Fund and the clerk operation and administration assessments in the cost sheet, and not including a separate assessment for the juvenile expungement fine, the clerk was enumerating each portion of the juvenile expungement fine assessed by the court. Therefore, we reject the State's confession of error with respect to these assessments. The assessments were proper.

¶ 14 In the alternative, defendant argues that presentence custody credit applies to these two assessments. However, defendant has already included the \$30 juvenile expungement fine in its calculation of presentence custody credit. By including the juvenile expungement fine in its calculation of presentence custody credit, defendant has already included credit for the State Police Services Fund and the clerk operation and administration assessments.

¶ 15 Lastly, we accept the State's confession of error that defendant is entitled to \$350 presentence custody credit as such credit is not subject to forfeiture. See *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997). We, therefore, direct the circuit court to reduce defendant's fines by \$350.

¶ 16 CONCLUSION

¶ 17 We affirm the judgment of the circuit court of Peoria County in part as to the convictions and sentence of imprisonment, vacate in part as to the Trauma Center Fund fine, and remand for the circuit court to enter a modified judgment on fines, fees, and costs in accordance with this order.

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

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

¶ 20 I respectfully concur in part and dissent in part. I agree with the majority's determination that the \$10 State Police Services Fine and the \$10 Clerk Operation Fine was properly ordered

by the court as part of the \$30 Juvenile Expungement Fine. I also agree that the trial court made a mistake when ordering defendant to pay \$100 for the Unlawful Use of Weapon (UW) Trauma Center Fine which was not authorized in this case. See 730 ILCS 5/5-9-1.10 (West 2014).

¶ 21 I respectfully dissent because I agree with the State that defendant has forfeited any challenge to the correctness of the monetary fines imposed by the court in the written order signed on March 5, 2015. I note defendant did not raise a timely challenge to the \$100 UW Trauma Center Fine when before the trial court.

¶ 22 Unlike the majority, I do not agree that this forfeited error is subject to our review based on either plain error or based on an assertion that defendant received ineffective assistance of counsel. As the majority points out, a forfeited error resulting from the ineffective assistance of defense counsel is not subject to our consideration *unless* defendant can establish defense counsel's error prejudiced defendant.

¶ 23 I respectfully submit that defendant was not prejudiced by defense counsel's decision to agree to the sum total of fines, fees, and costs in this case that mistakenly included an unauthorized \$100 UW Trauma Center Fine. Here, the trial court made other monetary errors that benefitted defendant which the defense has not taken into consideration.

¶ 24 For example, the court did *not* include any monetary assessment for the mandatory criminal surcharge the court was required to impose pursuant to 730 ILCS 5/5-9-1(c). The surcharge in this case should have been calculated at the rate of \$10 for every \$40 in punitive fines imposed by the court. Ignoring the \$100 UW Trauma Center Fine for the purpose of this surcharge, I note that the court imposed approximately \$850 in punitive fines. Consequently, the court should have ordered this defendant to pay a punitive criminal surcharge of no less than \$210, representing an additional fine that the trial court neglected to impose.

¶ 25 Had defense counsel called the first error regarding the U UW Trauma Center Fine to the court's attention, perhaps the trial court would have recalculated the punitive fines and added the previously omitted criminal surcharge. Based on these two judicial errors, one error favored defendant and the other worked to defendant's detriment. However, overall, the failure to assess a mandatory criminal surcharge of approximately \$200 counterbalances the error the court made by imposing a \$100 U UW Trauma Center Fine.

¶ 26 Viewing the monetary consequences as a whole, rather than on a piecemeal basis, I disagree that defense counsel's decision to approve this particular court order as a whole did not prejudice defendant. Absent a showing of actual prejudice to this defendant, I conclude forfeiture applies. Respectfully, I would deny the relief defendant requests for the first time on appeal.

¶ 27 I agree defendant has now properly applied to receive the \$5 *per diem* credit, However, I write separately to indicate not all the fines imposed in this case are eligible to be reduced by the *per diem* credit according to statute.