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2017 IL App (3d) 150373-U

Order filed September 21, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0373
JAVIER HERRERA-ARELLANO,)	Circuit No. 14-CF-276
Defendant-Appellant.)	Honorable Frank R. Fuhr, Judge, Presiding.

PRESIDING JUSTICE HOLDRDIGE delivered the judgment of the court. Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Circuit court's modification of the defendant's sentence in a written order after it had lost jurisdiction required vacatur of the written order and remand for the circuit court to enter a written order reflecting the oral pronouncement of sentence; (2) fines imposed by circuit clerk are void and vacated.

¶ 2 The defendant, Javier Herrera-Arellano, appeals from his conviction for unlawful possession of cannabis with intent to deliver. The defendant does not challenge his underlying conviction, but argues that the circuit court's written sentencing order, filed after the defendant's notice of appeal, is an illegal modification of his sentence as pronounced at his sentencing

hearing. The defendant also contends that certain fines imposed by the circuit clerk should be vacated.

¶ 3

FACTS

¶ 4

The State charged the defendant with one count of cannabis trafficking (720 ILCS 550/5.1(a), (b) (West 2014)) and two counts of unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2014)). The two charges for unlawful possession with intent to deliver (counts II and III) both alleged the knowing delivery of more than 5000 grams of cannabis on April 9, 2014. The charging instrument on count II provided the name of a person alleged to have received that cannabis, while the charging instrument on count III provided only the general allegation of delivery. The allegations in counts II and III were otherwise identical.

¶ 5

Following a bench trial, the defendant was found guilty on the two counts of unlawful possession with intent to deliver. A sentencing hearing was held on May 7, 2015, at which the parties and court agreed that the two convictions must merge. The court sentenced the defendant to a term of eight years' imprisonment on the single conviction, adding: "Mandatory court costs will be imposed. Those will be reduced to judgment." The court made no mention of any fines.

¶ 6

The defendant filed a motion to reconsider sentence, which the court denied on May 28, 2015. The defendant filed a notice of appeal the same day. This court appointed the Office of the State Appellate Defender to represent the defendant on June 1, 2015, and set a briefing schedule on June 4, 2015.

¶ 7

The circuit court issued a written sentencing order dated June 22, 2015, and file-stamped June 24, 2015. The written order lists two convictions for unlawful possession with intent to deliver, with sentences of eight years' imprisonment listed next to each conviction. Further, the

written order includes the imposition of a \$150,000 street value fine and a \$2000 drug assessment fee.

¶ 8 The final page in the common law record is a computer-generated printout titled “Payment Status Information.” The printout indicates that the information contained therein was retrieved on July 21, 2015. It includes a number of monetary assessments, including the street value fine and drug assessment fee referenced in the circuit court’s written order. It also contains a \$50 “Court” assessment and a \$40 “Violent Crime” assessment.

¶ 9 ANALYSIS

¶ 10 On appeal, the defendant argues that the circuit court’s imposition of fines in its written sentencing order, where it had not orally imposed any fines, was an extrajudicial modification of the defendant’s sentence. The defendant also argues that the written order was erroneous in that it failed to merge the two counts of unlawful possession with intent to deliver into a single conviction.

¶ 11 The State argues that the circuit court’s written order did not constitute a modification of its previous oral pronouncement. Further, the State argues that even if this court does accept defendant’s modification argument, relief should be limited to the vacatur of the street value fine and the drug assessment fee—the two fines listed in the circuit court’s written order. However, the State argues that the payment sheet is not an appealable order to pay fines, but merely a “receipt” of some kind, describing the payment sheet as “not relevant” to this appeal. Thus, the State argues that this court should take no action with those fines that only appear on the clerk’s payment sheet.

¶ 12 Upon the filing of a notice of appeal, the circuit court loses jurisdiction over the case. *People v. Patrick*, 2011 IL 111666, ¶ 39. However, the circuit court retains jurisdiction to

perform certain ministerial functions. *People v. Hernandez*, 296 Ill. App. 3d 349, 351 (1998). In a criminal case, the oral pronouncement of sentence constitutes the judgment of the court, while the entry of a written order is a ministerial act “and is merely evidence of the sentence.” *People v. Allen*, 71 Ill. 2d 378, 381 (1978). Thus, while the circuit court retains jurisdiction to enter a written order reflecting the oral pronouncement of sentence, it does not have jurisdiction to modify that pronouncement. *People v. McCray*, 2016 IL App (3d) 140554, ¶ 25; see also *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993) (“When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement of the court controls.”).

¶ 13 The State does not dispute the controlling legal principles, conceding that the circuit court does not have jurisdiction to modify its oral pronouncement of sentence after the notice of appeal has been filed. The State also concedes that the street value fine and drug assessment fee are, in fact, fines. See *People v. Johnson*, 2015 IL App (3d) 140364 (appendix). However, the State argues that the circuit court made no such modification in the present case. The State writes: “The trial judge in this case stated that he was imposing all mandatory costs, which, in a general way, included all mandatory assessments.”

¶ 14 We reject the State’s argument. The term “cost” cannot be construed to mean all assessments. In fact, the term “cost” is actually synonymous with the term “fee.” Our supreme court has explained the distinction as follows:

“Our appellate court has had cause to consider the distinguishing characteristics of a fee and a fine, and explained them as follows:

A fine is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense. [Citation.] A cost is a charge or fee taxed by a court such as a filing fee, jury fee, courthouse fee, or reporter

fee. [Citation.] Unlike a fine, which is punitive in nature, a cost does not punish a defendant in addition to the sentence he received, but instead is a collateral consequence of the defendant's conviction that is *compensatory in nature*. [Citation.] A fee is a charge for labor or services, especially professional services. [Citations.]

We agree with this characterization. [Citation.] Broadly speaking, a fine is a part of the punishment for a conviction, whereas *a fee or cost* seeks to recoup expenses incurred by the state—to compensat[e] the state for some expenditure incurred in prosecuting the defendant.” (Internal quotation marks omitted.) (Emphasis in original.) *People v. Jones*, 223 Ill. 2d 569, 581 (2006) (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)).

¶ 15 To equate the term “cost” with assessments generally would be to obliterate all distinction between pecuniary fines and compensatory fees or costs. The circuit court in the present case plainly ordered only the imposition of costs or fees. The inclusion of two fines in the subsequent written sentencing order constituted a modification of the defendant's sentence after the filing of the notice of appeal, and thus, after the circuit court had lost jurisdiction.

¶ 16 Accordingly, we vacate the circuit court's written sentencing order and remand for the entry of a written order that properly reflects the sentence orally pronounced on May 7, 2015. In doing so, we also point out that the written sentencing order in this case erroneously included two convictions and two separate sentences, despite the court having merged the two counts and orally imposing only a single conviction and sentence.¹ This error should also be remedied in the new sentencing order to be filed upon remand.

¹The State concedes that the written sentencing order was erroneous in this regard.

¶ 17 We agree with the State that the vacatur of the circuit court’s written order based on its inconsistency with the court’s oral pronouncement only serves to vacate the two fines actually included in that order. However, we reject the State’s contention that this court can do nothing in regard to the two other fines in question.

¶ 18 Initially, the State does not dispute that the “Violent Crime” assessment and “Court” assessment—presumably references to the Violent Crime Victims Assistance Fund fine and the court system fine, respectively—are fines. See *Johnson*, 2015 IL App (3d) 140364 (appendix). “Because the imposition of a fine is a judicial act, and the circuit clerk has no authority to levy fines, any fines imposed by the circuit clerk are void from their inception.” *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56; see also *People v. Wade*, 2016 IL App (3d) 150417, ¶ 12 (“The fines in this case were void, not because they failed to conform with statutory requirements, but because they were imposed not by the trial court, but by the circuit clerk.”).

¶ 19 The fact that the fines in question do not appear in a written court order does not prevent this court from conferring relief in the form of vacatur of those fines. In *People v. Gutierrez*, 2012 IL 111590, ¶ 13, our supreme court specifically rejected the argument that the appellate court may not review assessments that are “not embodied in any order of the circuit court.” While the State refers to the payment sheet as a mere “receipt,” it is, in any event, evidence that the circuit clerk has illegally imposed two fines. We therefore vacate those fines as void.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Rock Island County is vacated in part and remanded with instructions.

¶ 22 Vacated in part and remanded with instructions.