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2017 IL App (3d) 150429-U

Order filed August 1, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0429
	)	Circuit No. 12-CF-279
BENJAMIN M. BROWN,	)	
Defendant-Appellant.	)	Honorable David M. Carlson, Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justice McDade concurred in the judgment.  
Justice Wright dissented.

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**ORDER**

¶ 1 *Held:* The fines imposed by the circuit clerk without review by the circuit court are void.

¶ 2 Defendant, Benjamin M. Brown, appeals from the denial of his motion to reconsider sentence. Defendant argues that the fines imposed in this case should be vacated because they were imposed by the circuit clerk. We vacate defendant's fines and remand with directions for the circuit clerk to issue a refund.

FACTS

¶ 3

¶ 4

On February 9, 2012, defendant was charged by indictment with two counts of aggravated driving while under the influence (625 ILCS 5/11-501(a)(4), (a)(6), (d)(1)(C) (West 2006)). Thereafter, defendant was arrested, and on April 27, 2012, defendant posted \$1500 bond and was released from custody.

¶ 5

On January 24, 2013, defendant appeared before the court with private counsel to enter a guilty plea. Defendant pled guilty to count one of the indictment and count two was dismissed. On February 21, 2013, the court sentenced defendant to four years' imprisonment. While imposing the sentence, the court said "[t]here's \$1,500 up in bond, that shall be taken as fines and costs." On February 25, 2013, the circuit clerk entered a fines and costs sheet. The sheet showed that defendant was assessed the following charges that are the subject of this appeal: \$50 "court systems," \$491 "fine," \$230 "criminal surcharge," \$92 "drivers education," \$100 "victims fund-fine," and \$10 "arrestee's medical." The sheet applied defendant's \$1500 bond to \$1009 in costs and \$491 in fines. The sheet showed that defendant had a balance due of \$0. The sheet was not signed by the court. Defendant did not file a postsentence motion, and on March 22, 2013, defendant filed a notice of appeal. The appeal was docketed as case No. 3-13-0197.

¶ 6

On July 25, 2013, defendant filed a postconviction petition that alleged that he received ineffective assistance of trial counsel. The court dismissed defendant's petition, and defendant filed a notice of appeal. The appeal was docketed as case No. 3-13-0854.

¶ 7

We consolidated appeal Nos. 3-13-0197 and 3-13-0854. We found that trial counsel was ineffective for failing to file a postjudgment motion before he filed a notice of appeal. *People v. Brown*, No. 3-13-0197 (Sept. 30, 2014) (dispositional order). We remanded the cause for further proceedings. *Id.*

¶ 8 On remand, counsel for defendant filed a motion to reconsider sentence with a Rule 604(d) certificate. The court denied the motion, and on June 19, 2015, defendant filed a notice of appeal. Thereafter, the circuit clerk entered a second fines and costs sheet into the record. The sheet included the following additional charges: \$15 “State Police Opera,” \$30 “child advocacy cen,” \$10 “State Police Servi,” \$5 “drug court fee 1,” and \$10 “drug court fee 2.” Despite the inclusion of the additional charges, the sheet stated that defendant had a balance due of \$0. The sheet was not signed by the court.

¶ 9 ANALYSIS

¶ 10 Defendant argues that all of the fines imposed in this case must be vacated because they were imposed by the circuit clerk without authority or the oversight of the court. Defendant alleges that the clerk imposed the following assessments, that are fines, without authority:

“(1) a \$491 general fine (730 ILCS 5/5-4.5-50(b) (2012));

(2) a \$50 court systems fine (*People v. Johnson*, 2015 IL App (3d) 140364, ¶ 9, and *Johnson* Appendix at ¶ 16; 55 ILCS 5/5-1101(c) (2012));

(3) a \$230 criminal surcharge (*Johnson*, 2015 IL App (3d) 140364, ¶ 9, and *Johnson* Appendix at ¶ 33; 730 ILCS 5/5-9-1(c) (2012));

(4) a \$92 drivers education fund fine (*People v. Williams*, 2013 IL App (4th) 120313, *Williams* Appendix A at p. 12; 625 ILCS 5/16-104a(a) (2012));

(5) a \$100 violent crime victims assistance fund fine (*People v. Burnett*, 2016 IL App (3d) 140837, ¶ 8; 725 ILCS 240/10(b) (2012));

(6) a \$10 arrestee’s medical costs fund fine (*Johnson*, 2015 IL App (3d) 140364, ¶ 9, and *Johnson* Appendix at ¶ 23; 730 ILCS 125/17 (2012));

(7) a \$15 State Police Operation Assistance Fund fine (*Burnett*, 2016 IL App (3d) 140837, ¶ 8; 705 ILCS 105/27.3a(1.5), (5) (2012));

(8) a \$30 child advocacy center fine (*Johnson*, 2015 IL App (3d) 140364, *Johnson* Appendix at ¶ 20; 55 ILCS 5/5-1101(f-5) (2012));

(9) a \$10 State Police Services Fund fine (*Johnson*, 2015 IL App (3d) 140364, *Johnson* Appendix at ¶ 3; 730 ILCS 5/5-9-1.17 (2012)); and

(10) \$15 in drug court fees (*Burnett*, 2016 IL App (3d) 140837, ¶ 8; under 55 ILCS 5/5-1101(d-5), (f) (2012)).”

The State argues that the fines and costs sheets are extensions of the court’s oral order, and because the sheets are more specific than the oral order, they are the controlling order. *People v. Smith*, 242 Ill. App. 3d 399, 403 (1993). We reject the State’s argument and find that the above charges, which are classified as fines by statute or case law, are void because they were imposed by the circuit clerk without review of the court.

¶ 11 The imposition of a fine is a judicial act which can only be performed by a judge. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 89. The circuit clerk has no authority to impose a fine. *People v. Rexroad*, 2013 IL App (4th) 110981, ¶ 52. Any fine imposed by the clerk is void from its inception and must be vacated. *Warren*, 2016 IL App (4th) 120721-B, ¶ 89.

¶ 12 Here, the court orally ordered defendant’s \$1500 bond to be “taken as fines and costs.” The court did not expressly impose any specific fines. Thereafter, the circuit clerk entered fines and costs sheets into the record that imposed exactly \$1500 of fines and costs. These assessments included the 10 charges that defendant contests in this appeal. The statutory and common law authority cited by defendant establishes that each of the contested charges is judicially

recognized as a fine. *Supra* ¶ 10. Therefore, each of the 10 contested charges could only be imposed by the court. *People v. Fontana*, 251 Ill. App. 3d 694, 709 (1993).

¶ 13 Contrary to the State’s argument, the written and more specific fines and costs sheets entered by the clerk are not a controlling extension of the court’s order. The State’s argument presupposes that the court delegated its authority to the circuit clerk to specifically impose the appropriate fines.

“[A] sentencing judge may delegate the task of calculating the statutorily mandated minimum fines and costs to the clerk. [Citations.] However, delegating the task of calculating costs to the circuit clerk does not relieve the trial court of its obligation to oversee the clerk’s good-faith efforts by correcting any improper monetary charges in the clerk’s tally sheet.” *People v. Dillard*, 2014 IL App (3d) 121020, ¶ 14.

¶ 14 There is no indication in the record that the court delegated its authority to impose the mandatory minimum fines to the circuit clerk and subsequently reviewed the circuit clerk’s actions. To the contrary, the court orally imposed unspecified fines and costs in the total amount of \$1500. Thereafter, the circuit clerk imposed specific fines, which were documented in the fines and costs sheets. The court did not sign these sheets or otherwise indicate that it had reviewed the fines imposed by the clerk. Therefore, this is not an example of the court properly delegating its authority to the circuit clerk. As a result, the 10 contested fines are void, and we vacate these fines. See *People v. Wade*, 2016 IL App (3d) 150417, ¶ 16 (void fines are not subject to remand for reimposition of the fines because this would unlawfully increase defendant’s sentence).

¶ 15 Finally, defendant argues that he is entitled to a refund because his bond was applied to satisfy the fines. After reviewing the record, we agree that defendant is entitled to a refund as the fines and costs sheets establish that defendant's bond was applied to the fines and that he has no balance due. Therefore, we order the clerk to issue defendant a \$1043 refund. *People v. Molidor*, 2012 IL App (2d) 110006, ¶ 20.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is vacated in part and remanded with directions.

¶ 18 Vacated in part and remanded with directions.

¶ 19 JUSTICE WRIGHT, dissenting.

¶ 20 On January 24, 2013, the trial court ordered defendant to pay a total of \$1500 for fines and court costs and to serve four years' imprisonment. The court ordered bond to be applied to pay all defendant's fines and costs in full. The trial court did not impose a pay date as part of the judgment order because the bond posted was sufficient to fulfill all of defendant's monetary obligations. Defendant was present in court when the judge gave the clerk directions to apply the bond to the court costs and then apply the remaining balance to pay fines.

¶ 21 On February 25, 2013, the circuit clerk allocated the \$1500 posted as bond to court costs and showed the remaining balance would be \$491 for fines, as directed by the court. This process was documented in the clerk's records revealing all monies were paid in full on February 25, 2013.

¶ 22 I respectfully observe that an actual controversy is a necessary prerequisite for the exercise of our appellate jurisdiction. *La Salle National Bank v. City of Chicago*, 3 Ill. 2d 375, 378-79 (1954). The existence of an actual controversy incorporates a number of interconnected

principles of justiciability, such as standing, ripeness, mootness, advisory opinions, and political questions. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008).

¶ 23           The monetary component of the sentence imposed by the trial court in this case has been fully satisfied and served since 2013. Now, defendant raises an issue related to the monetary component of this sentence. Since these monetary consequences have been fulfilled, I conclude any issue related to a completed sentence is moot. See *People v. Roberson*, 212 Ill. 2d 430, 435 (2004).

¶ 24           Respectfully, defendant did not expect a refund of any portion of the bond in 2013 and is not entitled to a refund four years later. For these reasons, I respectfully dissent.