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2017 IL App (3d) 150465-U

Order filed July 28, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois, |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal No. 3-15-0465 |
| JEREMY D. STAM, |) | Circuit No. 14-CF-539 |
| Defendant-Appellant. |) | Honorable Clark E. Erickson, Judge, Presiding. |

JUSTICE CARTER delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held:* The circuit court improperly modified defendant's sentence by imposing additional fines after defendant filed his notice of appeal. The circuit court also erroneously imposed two duplicative fees and a preliminary examination fee.

¶ 2 Defendant, Jeremy D. Stam, appeals certain fines and fees imposed in relation to his conviction for aggravated domestic battery. Defendant does not challenge his actual conviction or sentence of imprisonment. Upon review, we affirm defendant's conviction and sentence, but vacate \$380 from defendant's total monetary assessment.

¶ 3

FACTS

¶ 4

Following a bench trial, defendant was found guilty of two counts of aggravated domestic battery (720 ILCS 5/12-3.3(a), (a-5) (West 2014)) and one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)). The circuit court merged the three counts into one conviction for aggravated domestic battery.

¶ 5

On June 22, 2015, the court held a sentencing hearing. At the hearing, the court sentenced defendant to 24 months' probation, granted defendant 3 days of presentence credit, imposed a \$200 domestic violence fine, and awarded him a \$15 credit toward the fine. The court did not reference any other fines in its oral pronouncement. The docket entry corresponding to the hearing states, "defendant shall pay \$200.00 domestic violence fine and court costs." The docket entry does not reference any fines other than the domestic violence fine, but the entry shows that the State would prepare a costs order.

¶ 6

On June 26, 2015, defendant filed a notice of appeal.

¶ 7

On July 17, 2015, the court entered a signed order stating "On the 22nd day of June, 2015 [(the date of the sentencing hearing)] on motion of the State pursuant to the provisions of the Illinois Compiled Statutes, the following fine[s], fees and costs are hereby allowed in the above-captioned case." The order includes two \$100 "Felony" fees, two \$30 "Courts Felony Conviction" fees, and a \$10 "Preliminary Exam for Bail or Recognizance" fee. The order also includes: (1) \$15 "State Police Operation Assistant Fund" charge, (2) \$5 "Trauma Center Fund/Gang Violence/Crime Stoppers Fee," (3) two \$50 "Court Fund" fees, (4) \$10 "Domestic Battery Fine," (5) \$100 "Crime Victim's Relief Fine," and (6) \$10 Arrestee's Medical Cost Fund" charge.

¶ 8

ANALYSIS

¶ 9 Initially, we address the State’s argument that this court lacks jurisdiction to consider defendant’s appeal. Specifically, the State calls attention to the court’s July 17, 2015, “written order for fines, fees, and costs [which] states that it is a ruling on the People’s motion made June 22, 2015, the date of sentencing.” According to the State, defendant’s notice of appeal is premature because it was filed prior to the circuit court’s ruling on the State’s postsentencing motion. We disagree with the State’s characterization of the fines, fees, and costs order as a ruling on a postsentencing motion. Instead, we find the fines, fees, and costs order merely memorialized the court’s oral pronouncement of defendant’s sentence.

¶ 10 Supreme Court Rule 606(b) provides that a notice of appeal must be filed within 30 days after the entry of the final judgment or, if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion. Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014). “[I]f a postsentencing motion is timely filed, then the circuit court is required to consider the motion, and for purposes of perfecting an appeal, no final judgment shall be considered entered until the motion is disposed of by order entered by the trial court.” *People v. Everage*, 303 Ill. App. 3d 1082, 1086 (1999). Jurisdiction is lacking in the appellate court if the notice of appeal is filed before the filing and disposition of a timely postsentencing motion. *Id.*

¶ 11 Here, the court did not enter the written fines, fees, and costs order until after defendant filed his notice of appeal. However, at the sentencing hearing the court ordered the State to prepare a costs order. The entry of a written judgment order is a “ministerial act” that is “merely evidence of the sentence.” *People v. Bender*, 226 Ill. App. 3d 940, 942 (1992). The circuit court had jurisdiction to complete the ministerial act of filing a written judgment order even though a notice of appeal had been filed. See *People v. Glenn*, 25 Ill. 2d 82, 85 (1962) (“Although a court may lose jurisdiction of a case, it does not lose jurisdiction over its own records, and the fact that

an appeal has been taken does not deprive the lower court of the power to correct its record.”).

Thus, the fines, fees, and costs order merely memorialized the court’s oral pronouncement of the sentence on June 22, 2015, and was not a ruling on a postsentencing motion. Therefore, defendant’s notice of appeal (filed within 30 days of sentencing) was timely. See Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014).¹

¶ 12 We now turn to defendant’s argument on appeal. Defendant challenges a number of monetary assessments imposed upon him following his conviction. He first argues that the circuit court imposed additional fines that were not specifically ordered at sentencing. Second, defendant argues that he was ordered to pay two duplicative fees. Third, defendant contends that the court erroneously order him to pay a preliminary examination fee where no preliminary examination hearing had been held. We discuss each argument in turn.

¶ 13 First, defendant contends that the circuit court’s written order for fines, fees, and costs improperly modified his sentence by adding the following fines: (1) \$15 “State Police Operation Assistant Fund” charge, (2) \$5 “Trauma Center Fund/Gang Violence/Crime Stoppers Fee,” (3) two \$50 “Court Fund” fees, (4) \$10 “Domestic Battery Fine,” and (5) \$100 “Crime Victim’s Relief Fine,” and (6) \$10 Arrestee’s Medical Cost Fund” charge. Because these fines were not imposed at sentencing and were assessed after defendant filed his notice of appeal, we find the imposition of these fines constitutes an improper modification of defendant’s sentence.

¶ 14 As noted above, although the circuit court “had jurisdiction to enter a written judgment order reflecting the pronounced sentence, it did not have jurisdiction to modify its pronouncement after the filing of defendant’s notice of appeal.” *People v. McCray*, 2016 IL App

¹Because we find the fines, fees, and costs order merely memorialized the circuit court’s oral pronouncement at sentencing, we need not consider the issue of whether the State has the authority to file a motion to reconsider a defendant’s sentence.

(3d) 140554, ¶ 25. Here, defendant filed his notice of appeal on June 26, 2015. This filing divested the circuit court of jurisdiction, except to perform ministerial functions—such as the entry of a written order reflecting the previously pronounced sentence. In other words, the court retained jurisdiction to enter a fines, fees, and costs order consistent with its oral pronouncement. The flaw with the court’s imposition of the above fines is that they were not imposed or referenced during the circuit court’s oral pronouncement. *Id.* Stated differently, the court neither imposed fines generally nor any of the above mentioned fines specifically during its oral pronouncement. Instead, the court only imposed a \$200 domestic violence fine and “costs.”

¶ 15 The assessments identified above (*supra* ¶ 13) are fines, not costs. See *People v. Johnson*, 2015 IL App (3d) 140364 (appendix). “ ‘A “fine” is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.’ ” *People v. Jones*, 223 Ill. 2d 569, 588 (2006) (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). Consequently, the circuit court’s imposition of the above fines (*supra* ¶ 13) after the filing of the notice of appeal constitutes an improper modification of defendant’s sentence. *McCray*, 2016 IL App (3d) 140554, ¶ 25. Accordingly, we vacate the \$240 in fines.

¶ 16 Second, defendant argues that the circuit court erroneously imposed two duplicative fees. Those two fees are the \$100 “Felony” fees and the two \$30 “Courts Felony Conviction” fees. The statute authorizing the “Felony” fee allows the clerk to collect a \$100 fee only on the complaint, and not each count. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 105; 705 ILCS 105/27.1a(w) (West 2014). Similarly, the statute authorizing the “Courts Felony Conviction” fee allows the imposition of a \$30 charge for each *conviction* in prosecutions on indictments for “all other cases punishable by imprisonment in the penitentiary.” 55 ILCS 5/4-2002(a) (West 2014). Although defendant was found guilty of three felonies, those counts

merged into one single conviction and sentence. Because these statutes authorize only one assessment against defendant the duplicative \$100 “Felony” fee and the \$30 “Courts Felony Conviction” fee must be vacated. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 101 (fee imposed without proper statutory authority is void *ab initio*). Accordingly, we vacate the \$130 in duplicative fees.

¶ 17 Third, defendant contends that the circuit court erroneously order defendant to pay a \$10 “Preliminary Exam for Bail or Recognizance” fee. Because defendant in this case was arraigned and no probable cause hearing was held, the fee was unauthorized. See *People v. Smith*, 236 Ill. 2d 162, 170-71 (2010) (a circuit court cannot impose a preliminary examination fee where there had been no probable cause hearing). Therefore, we vacate this \$10 fee.

¶ 18 In summary, we vacate \$240 in fines, as they were imposed after the court lost jurisdiction. We also vacate the two duplicative fees of \$130, and the \$10 preliminary fee. In total, we vacate \$380 from defendant’s total monetary assessment. We otherwise affirm defendant’s conviction and sentence.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Kankakee County is affirmed in part and vacated in part.

¶ 21 Affirmed in part and vacated in part.

¶ 22 JUSTICE WRIGHT, dissenting.

¶ 23 I respectfully dissent. The issue in this case regarding a premature notice of appeal has been recently addressed in *People v. Warren*, 2017 IL App (3d) 150085. Based on the rationale of *Warren*, I conclude defendant’s notice of appeal challenging a court order dated June 22, 2015, does not confer jurisdiction upon this court to review a judicial order dated July 17, 2015.

For this reason, I conclude this court does not have jurisdiction to consider the issues raised in this appeal.