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2017 IL App (3d) 150706-U

Order filed October 25, 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 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Circuit No. 14-CF-806
ROBERTO PALET-ALVARADO,	)	Honorable
Defendant-Appellant.	)	F. Michael Meersman, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices McDade and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The court did not have jurisdiction to modify defendant's sentence after the notice of appeal was filed.
- ¶ 2 Defendant, Roberto Palet-Alvarado, appeals from his sentence, arguing that the circuit court's written judgment order should be vacated because the court modified its judgment after the notice of appeal was filed without jurisdiction to do so. We affirm in part, vacate in part, and remand with directions.

¶ 3

## FACTS

¶ 4

After a jury trial, defendant was convicted of unlawful possession with intent to deliver cannabis. 720 ILCS 550/5(g) (West 2014). Defendant's motions for judgment notwithstanding the verdict and new trial were denied. On October 6, 2015, defendant was sentenced to 10 years' imprisonment. The court further stated:

“I find you have absolutely no ability to make any payments, so all the monies are reduced to judgment. And, in relation to that, if I remember correctly, I don't think he owes—well, he owes money still on that old DUI and, obviously, the old DOC sentence. Anything he owes monies on is reduced to judgment because he doesn't have the ability to pay it anyway and it's one less thing he has to worry about.”

¶ 5

Defendant waived his right to file a motion to reconsider sentence, and defendant's notice of appeal was filed on October 6, 2015. The docket sheet stated, “[Defendant] is sentenced to 10 YEARS DOC, 3 YEARS MSR, CREDIT FOR TIME SERVED, DAY FOR DAY TO APPLY. PLUS COSTS. ALL COSTS ARE REDUCED TO JUDGMENT.”

¶ 6

On October 8, 2015, the court issued two judgment orders. One of the orders addressed the amount of incarceration but did not address any monetary considerations. The other order itemized the following amounts: \$100 laboratory analysis fee (730 ILCS 5/5-9-1.4(b) (West 2014)); \$3000 drug assessment (720 ILCS 550/10.3(a)(1) (West 2014)); \$100,000 street value fine (730 ILCS 5/5-9-1.1(a) (West 2014)); \$20 Violent Crime Victims Assistance Fund fine (725 ILCS 240/10 (West 2014)); \$25 drug task force fee (730 ILCS 5/5-9-1.1(e) (West 2014)); \$25 Drug Traffic Prevention Fund fine (730 ILCS 5/5-9-1.1(e) (West 2014)); \$10 medical costs fund fine (730 ILCS 125/17 (West 2014)); \$5 spinal cord injury fund fine (730 ILCS 5/5-9-1.1(c)

(West 2014)); \$35 crime stoppers fee (730 ILCS 5/5-6-3(b)(13) (West 2014)); \$100 Trauma Center Fund fine (730 ILCS 5/5-9-1.1(b) (West 2014)); and \$250 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2014)), for a total of \$103,570, plus the costs of prosecution.

¶ 7 Defendant filed an amended notice of appeal on November 5, 2015. Whereas the October 6 notice of appeal stated that defendant was appealing from his jury verdict, the amended notice of appeal included the court’s oral pronouncement of sentence on October 6, 2015.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues the court did not have jurisdiction to modify its judgment after the notice of appeal was filed. Specifically, defendant argues the fines listed in the written sentencing order must be vacated because the court’s oral pronouncement at sentencing did not impose any punitive fines. Therefore, defendant submits that the trial court did not have jurisdiction to add punitive amounts to the directives set out in the written sentencing order signed by the court after the notice of appeal.

¶ 10 This issue was addressed in *People v. McCray*, 2016 IL App (3d) 140554. In *McCray*, the court sentenced the defendant to six years’ imprisonment and stated, “ ‘[A]ll the mon[ies] owed are reduced to judgment. I don’t show anything else in here he owes any other money on anything, but any money in this county is all reduced to judgment.’ ” *Id.* ¶ 6. The docket sheet also showed the court ordered “ ‘costs to be reduced to judgment.’ ” *Id.* After the defendant filed a notice of appeal and amended notice of appeal, the court signed a written judgment that ordered the defendant to pay a drug assessment of \$2000. *Id.* ¶ 8. The defendant appealed, arguing that “the written judgment order modified defendant’s sentence by adding a \$2000 drug assessment.” *Id.* ¶ 22. Our holding in *McCray* applies in the case at bar. We stated:

“While the trial 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. See *Kolzow*, 332 Ill. App. 3d at 459. Here, defendant filed his notice of appeal on July 8, 2014. This filing divested the trial court of jurisdiction, except to perform ministerial functions—such as the entry of a written order reflecting the previously pronounced sentence. The fatal jurisdictional flaw with regard to the \$2000 drug assessment—which was entered on July 17, 2014—is that it was not imposed or even referenced during the trial court’s oral pronouncement. Stated another way, the trial court did not impose fines generally or a drug assessment specifically during its oral pronouncement. Instead the trial court ordered only ‘costs.’ The drug assessment is a fine, not a cost. See *People v. Jones*, 223 Ill. 2d 569, 588 (2006). ‘“A ‘fine’ is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.”’ *Id.* at 581 (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002) and citing *People v. Despenza*, 318 Ill. App. 3d 1155, 1157 (2001)). Accordingly, the trial court’s imposition of the \$2000 drug assessment fine after the filing of the notice of appeal constitutes an improper modification of defendant’s sentence.” *McCray*, 2016 IL App (3d) 140554, ¶ 25.

¶ 11 Here, as in *McCray*, the court announced that all monies should be reduced to judgment, but did not articulate any punitive amount as part of the balance to be reduced to judgment. The written sentencing order, signed after the notice of appeal was filed in this case, included punitive amounts that were not articulated by the trial court and could not be assessed as costs by the circuit clerk (*People v. Johnson*, 2015 IL App (3d) 140364 (appendix)): \$3000 drug

assessment (*Jones*, 223 Ill. 2d at 588); \$100,000 street value fine (*People v. Lewis*, 234 Ill. 2d 32, 44-45 (2009)); \$20 Violent Crime Victims Assistance Fund fine (*People v. Dillard*, 2014 IL App (3d) 121020, ¶ 11); \$10 medical costs fund fine (*People v. Larue*, 2014 IL App (4th) 120595, ¶ 57); \$5 spinal cord injury fund fine (*Jones*, 223 Ill. 2d at 599); \$35 crime stoppers fee (*People v. Littlejohn*, 338 Ill. App. 3d 281, 284 (2003)); and \$100 Trauma Center Fund fine (*Jones*, 223 Ill. 2d at 593).

¶ 12 The court also assessed two other fines, a “Drug Task Force Fee in the amount of \$25.00 pursuant to 730 ILCS 5/5-9-1.1(d)”<sup>1</sup> and a “\$25.00 Drug Traffic Prevention Fund Fee pursuant to 730 ILCS 5/5-9-1.1(e).” Our review of the applicable statutes shows that these two fines are duplicative assessments of the drug task force fine (see *Johnson*, 2015 IL App (3d) 140364 (appendix)) under section 5-9-1.1(e) of the Unified Code of Corrections (Code). 730 ILCS 5/5-9-1.1(e) (West 2014). In 2012, section 5-9-1.1(e) of the Code provided that a \$25 assessment shall be assessed for the funding of drug task forces to be deposited into the Drug Traffic Prevention Fund. 730 ILCS 5/5-9-1.1(e) (West 2012). As of 2013, the Drug Traffic Prevention Fund no longer exists, and assessments for the drug task force now go to the Criminal Justice Information Projects Fund. 730 ILCS 5/5-9-1.1(e) (West 2014).

¶ 13 Since the record does not show that the court specifically announced the imposition of the above punitive fines (*supra* ¶¶ 11-12) during its oral pronouncement of sentence, the imposition of the fines after the filing of the notice of appeal constitutes an improper modification of defendant’s sentence by the court after a loss of jurisdiction to do so. Modifying the sentence by including fines in the written sentencing order that were not included in the oral pronouncement

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<sup>1</sup>We note that the court purportedly assessed the “Drug Task Force Fee” under section 5-9-1.1(d) of the Code. However, that section actually provided for a \$50 fee for the Performance-enhancing Substance Testing Fund and has been inoperative since June 30, 2011. 730 ILCS 5/5-9-1.1(d) (West 2014).

of sentence is not a ministerial act. See *McCray*, 2016 IL App (3d) 140554, ¶ 25 (an example of a ministerial act is the entry of a written order reflecting the previously pronounced sentence).

We, therefore, vacate the court's written order addressing the monies due, remand the matter to the trial court to sign an order that correctly reduces the court costs to judgment in this case, and otherwise affirm the judgment.

¶ 14

#### CONCLUSION

¶ 15

The judgment of the circuit court of Rock Island County is affirmed in part, vacated in part, and remanded with directions.

¶ 16

Affirmed in part and vacated in part.

¶ 17

Cause remanded with directions.