

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

January 31, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150171-U

NO. 4-15-0171

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
KYLE M. PICKENS,)	No. 13CF699
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant’s conviction and sentence but vacated fines improperly imposed by the circuit clerk.

¶ 2 In September 2013, defendant, Kyle M. Pickens, pleaded guilty to one count of unlawful possession of a controlled substance. In October 2013, the trial court sentenced defendant to nine years in prison and imposed various fines and fees. Thereafter, the circuit clerk assessed various fines against defendant. In January 2015, defendant filed a postconviction petition, which the trial court dismissed as frivolous and patently without merit.

¶ 3 On appeal, defendant argues (1) the circuit clerk improperly imposed numerous fines against him and (2) this court has jurisdiction to vacate the Crime Stoppers fee that was imposed without statutory authority. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In May 2013, the State charged defendant by information with single counts of unlawful possession with intent to deliver a controlled substance (count I) (720 ILCS 570/401(a)(2)(A) (West 2012)) and unlawful possession with intent to deliver cannabis (count II) (720 ILCS 550/5(d) (West 2012)). In September 2013, the State added an additional count of unlawful possession of a controlled substance (count III) (720 ILCS 570/402(a)(2)(A) (West 2012)).

¶ 6 In September 2013, defendant pleaded guilty to count III, and the State agreed to dismiss counts I and II. Both parties agreed defendant would pay a mandatory street value fine of \$8,500, and the State agreed to cap its sentencing recommendation at 10 years. Following a factual basis, the trial court found defendant's guilty plea to be voluntary.

¶ 7 In October 2013, the trial court sentenced defendant to nine years in prison. The court also imposed an \$8,500 street value fine, a \$2,000 mandatory assessment, a \$100 lab fee, a \$250 deoxyribonucleic acid (DNA) fee, and a \$10 Crime Stoppers assessment. With the obligation to pay \$10,860 in fines and fees, the court ordered defendant to be credited \$905 for time served.

¶ 8 Thereafter, the circuit clerk assessed a total of \$13,077 against defendant. The total included the \$905 credit for time served, which was credited against the \$2,000 mandatory assessment, leaving a balance of \$1,095. The \$13,077 total also included the following assessments: (1) \$50 "Court Finance Fee"; (2) \$40 "State's Attorney"; (3) \$2 "State's Attorney Au[tomation]"; (4) \$10 "Arrestee's Medical"; (5) \$5 "Spinal Cord"; (6) \$100 "Trauma Fund"; (7) \$2,630 "Traffic/Criminals"; (8) \$5 "Drug Court Program"; (9) \$100 "Violent Crime Vict[ims]"; (10) \$10 "St Police Services"; (11) \$10 "St Police Operatio[ns]"; and (12) \$10 "Clerk Op & Admin F[ee]."

¶ 9 Defendant did not file any postplea motions or a direct appeal. In January 2015, defendant filed a *pro se* petition for postconviction relief under the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)), alleging his nine-year sentence was excessive and his trial attorney was ineffective because counsel promised he would receive probation or a shorter term of imprisonment. In February 2015, the trial court dismissed the petition, finding it frivolous and patently without merit. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 A. Defendant’s Fines

¶ 12 Defendant argues the circuit clerk improperly imposed numerous fines. The State argues he has forfeited review of this issue because he failed to raise it in his postconviction petition. However, fines imposed by the circuit clerk are void, and we have jurisdiction to rule on any amount improperly imposed. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437 (stating “the appellate court had jurisdiction to act on void orders of the circuit clerk”). Moreover, a void judgment can be challenged “ ‘at any time or in any court, either directly or collaterally.’ ” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)).

¶ 13 This court has previously addressed the impropriety of the circuit clerk imposing judicial fines. See *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 75-171, 16 N.E.3d 13; *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 54-73, 10 N.E.3d 959. “Although circuit clerks can have the statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act.” (Emphases omitted.) *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Thus, “any fines imposed by the circuit clerk are void from their inception.” *Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. The propriety of

the imposition of fines and fees presents a question of law, which we review *de novo*. *People v. Guja*, 2016 IL App (1st) 1440046, ¶ 69, 51 N.E.3d 970.

¶ 14 In the case *sub judice*, the trial court imposed the following fines and fees: (1) \$8,500 street value fine; (2) \$2,000 mandatory assessment; (3) \$250 DNA fee; (4) \$100 lab fee; and (5) \$10 Crime Stoppers fine. Upon review, we find the following fines were imposed by the circuit clerk and are therefore void: (1) \$50 court finance fee (*Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912); (2) \$10 arrestee's medical assessment (*Warren*, 2016 IL App (4th) 120721-B, ¶ 119, 55 N.E.3d 117); (3) \$5 Spinal Cord Fund fee (*Warren*, 2016 IL App (4th) 120721-B, ¶ 123, 55 N.E.3d 117); (4) \$100 Trauma Center Fund assessment (*Warren*, 2016 IL App (4th) 120721-B, ¶ 126, 55 N.E.3d 117); (5) \$2,630 traffic/criminal surcharge (*Warren*, 2016 IL App (4th) 120721-B, ¶ 129, 55 N.E.3d 117); (6) \$5 drug-court assessment (*Warren*, 2016 IL App (4th) 120721-B, ¶ 138, 55 N.E.3d 117); and (7) \$10 State Police Operations Assistance fee (*People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030). Because the clerk imposed these fines after sentencing, we vacate these fines.

¶ 15 The circuit clerk also imposed a \$100 Violent Crime Victims Assistance Fund fine. Although the trial court ordered the imposition of this fine in its written judgment order, it did not determine the appropriate amount of the fine. "Absent a court order imposing a specific fine, it is well established the clerk of a court, as a nonjudicial member of the court, has no power to levy fines." *Smith*, 2014 IL App (4th) 121118, ¶ 63, 18 N.E.3d 912. Accordingly, this fine must also be vacated.

¶ 16 The record also shows the circuit clerk imposed a \$30 Juvenile Expungement Fund assessment. The \$30 assessment is listed on the clerk's printout as a \$10 assessment for the Clerk Operations and Administrative Fund, a \$10 assessment for the State's Attorney Office

Fund (the \$10 assessment for the State's Attorney is included in the \$40 charge listed for the State's Attorney on the clerk's printout), and a \$10 assessment for the State Police Services Fund. This collective assessment is a fine and must be vacated. *Warren*, 2016 IL App (4th) 120721-B, ¶ 134, 55 N.E.3d 117.

¶ 17 Defendant argues the \$2 State's Attorney automation fee is a fine that must be vacated. In *Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117, we held that, because the legislature intended the assessment to reimburse the State's Attorneys for their expenses related to automated record-keeping systems, the assessment was not punitive in nature and thus constituted a fee. Thus, we found the circuit clerk could properly impose the assessment. *Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117. We decline to depart from our decision in *Warren*. Thus, we do not vacate the \$2 State's Attorney automation fee. See *People v. Daily*, 2016 IL App (4th) 150588, ¶ 30.

¶ 18 As stated, the fines improperly imposed by the circuit clerk must be vacated. However, we decline to remand to the trial court to reimpose the vacated fines. See *People v. Wade*, 2016 IL App (3d) 150417, ¶ 16, 64 N.E.3d 703.

¶ 19 B. Crime Stoppers Fee

¶ 20 Defendant argues this court has jurisdiction to vacate the \$10 Crime Stoppers fee that was imposed by the trial court without statutory authority, claiming the abolition of the void-sentence rule is not retroactive. We disagree.

¶ 21 Our supreme court abolished the void-sentence rule in *People v. Castleberry*, 2015 IL 116916, ¶ 19, 43 N.E.2d 932, and thus, "a defendant may no longer rely on the void sentence rule to overcome forfeiture of a claimed sentencing error or to challenge a statutorily nonconforming sentence in perpetuity." *People v. Price*, 2016 IL 118613, ¶ 17. This court has

found the holding in *Castleberry* applies retroactively. *People v. Stafford*, 2016 IL App (4th) 140309, ¶ 33, 61 N.E.3d 1058; see also *People v. Cashaw*, 2016 IL App (4th) 140759, ¶ 33, 64 N.E.3d 1102 (agreeing “with the ultimate holding of *Stafford* that *Castleberry* applies retroactively to collateral proceedings in which a petitioner seeks to challenge a conviction that became finalized prior to the supreme court’s decision in *Castleberry*”). Our supreme court has recently concluded *Castleberry* applies retroactively to a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)) that was pending at the time *Castleberry* was decided. *Price*, 2016 IL 118613, ¶ 35. Thus, we will adhere to our prior rulings. With the abolition of the void-sentence rule, “a sentence can only be challenged at any time as void if the court lacked personal or subject matter jurisdiction.” *Stafford*, 2016 IL App (4th) 140309, ¶ 33, 61 N.E.3d 1058. Because defendant does not challenge the trial court’s personal or subject matter jurisdiction, under *Castleberry*, we need not address whether his Crime Stoppers fee is void.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we vacate the fines improperly imposed by the circuit clerk. We otherwise affirm defendant’s conviction and sentence.

¶ 24 Affirmed in part and vacated in part.