

**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**

February 10, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 150274-U

NO. 4-15-0274

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MICKOL E. CROW,	)	No. 13CF394
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The fines improperly entered by the circuit clerk are vacated. The trial court's summary dismissal of defendant's petition for postconviction relief is otherwise affirmed.

¶ 2 Defendant, Mickol E. Crow, appeals the trial court's summary dismissal of his *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)). On appeal, defendant contends the \$190 statutory surcharge assessment, the \$50 court system assessment, and the \$10 probation and court services operation assessment are fines and must be vacated because they were improperly imposed by the circuit clerk. We vacate the two fines and affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 In March 2013, defendant was charged with three counts of predatory criminal sexual assault (720 ILCS 5/11-1.40(a)(1) (West 2012)) (counts II, III, VI) and five counts of

aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2012)) (counts I, IV, V, VII, VIII).

¶ 5 In July 2013, defendant entered a fully negotiated guilty plea to predatory criminal sexual assault (count II). In exchange for his plea, all other counts were dismissed, and he was sentenced to 18 years in prison followed by three years of mandatory supervised release. As a part of the agreed sentence, the trial court ordered defendant pay a "\$--- fine, plus court costs and fees as authorized by law, payable as follows: \$75 VCVA, \$250 DNA, \$10 Dg. Ct, \$15 CAC, \$30 Juv. Ex, \$200 Sexual Assault, \$500 Sex Offender, \$200 PD, \$2 SA Record." The supplemental sentencing order form signed by the judge reflected the above-noted fines. On the form, the judge also checked the line item for "Statutory Surcharge," which delegated computation of the surcharge to the circuit clerk. The "Notice to Party" prepared by the circuit clerk's office reflected the above-cited assessments. It computed the lump sum surcharge at \$190, but it also included a \$50 court system fee and a \$10 probation and court services operations assessment.

¶ 6 Defendant did not file a motion to withdraw his guilty plea or directly appeal his conviction or sentence.

¶ 7 In January 2015, defendant filed a *pro se* postconviction petition, arguing, *inter alia*, he was denied due process, fundamental fairness, and effective assistance of counsel because his counsel did not contest the circuit clerk's improper imposition of certain fines and fees. In March 2015, the trial court summarily dismissed the petition, finding it was frivolous, patently without merit, and did not state the gist of a constitutional claim. With regard to the imposition of the various fines and fees, the court found the fines and costs were properly assessed, noting the court, not the circuit clerk, had imposed the fines and fees within the plea

agreement and supplemental sentencing order.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant appeals the dismissal of his postconviction petition. However, he does not assert any error in that dismissal. Instead, defendant raises a claim attacking certain financial aspects of his sentence, *i.e.*, the alleged improper imposition of the \$50 court system assessment, the \$10 probation and court services operation assessment, and the \$190 statutory surcharge assessment by the circuit clerk. The State argues the record suggests the trial court, not the clerk, imposed the fines at issue. On this basis, the State maintains the fines are proper or, alternatively, we should vacate the fines and remand to the trial court for reimposition.

¶ 11 The determination of whether the circuit clerk imposed a fine against a defendant is an issue of statutory construction reviewed *de novo*. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 99, 55 N.E.3d 117 (citing *People v. Gutman*, 2011 IL 110338, ¶ 12, 959 N.E.2d 621). "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, 10 N.E.3d 959.

¶ 12 We agree with the parties the following assessments are fines: \$50 court system assessment (*People v. Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912); \$190 statutory surcharge (*Warren*, 2016 IL App (4th) 120721-B, ¶ 129, 55 N.E.3d 117); and \$10 probation and court services assessment (*People v. Rogers*, 2014 IL App (4th) 121088, ¶ 38, 13 N.E.3d 1280).

¶ 13 As pointed out by the State, after the trial court accepted defendant's plea, it stated, "The court will enter a written judgment order sentencing defendant in accordance with that announced judgment. Defendant also ordered to pay all fines, fees[,] and costs required by

law." However, prior to this statement, when setting forth the terms of the plea agreement, the court stated the following:

"In addition to that, you will be ordered to pay all the mandatory fines, fees[,] and assessments required by the law, and they are noted on your agreement. They include a \$500 sex offender fine, a \$200 sexual assault fine, a \$250 DNA fee[,] and then a number of smaller fines, including a \$10 drug court, \$15 Child Advocacy Center, \$30 juvenile records, \$5 state police fee[,] and a \$2 State's Attorney automation fee, along with the other standard costs."

The written plea agreement reflected these same fines and fees.

¶ 14 This specific delineation is inconsistent with the State's assertion the trial court's pronouncement ordering defendant "to pay all fines, fees[,] and costs required by law" somehow imposed *all* statutorily authorized fines. To the contrary, the plea agreement reflects the court's imposition of certain fines and leaves no room for the imposition of additional fines not specifically mentioned. Thus, we reject the State's argument all fines required by law were judicially imposed and find the fines at issue were imposed by the clerk. However, we find the court did impose the statutory surcharge in its supplemental sentencing order and appropriately delegated computation of that amount to the circuit clerk. See *People v. Dillard*, 2014 IL App (3d) 121020, ¶ 14, 14 N.E.3d 1285 ("a sentencing judge may delegate the task of calculating the statutorily mandated minimum fines and costs to the clerk"). Additionally, we conclude the circuit clerk, not the court, imposed the \$50 court system fee and the \$10 probation and court services operations assessment and, therefore, vacate those fines.

¶ 15 Next, we examine the appropriateness of remanding this cause with directions to the trial court to impose any vacated fines. Defendant argues remandment for reimposition of the clerk-imposed fines by the trial court increases defendant's financial penalty in violation of *People v. Castleberry*, 2015 IL 116916, ¶ 25, 43 N.E.3d 932. Citing *People v. Hible*, 2016 IL App (4th) 131096, ¶ 33, 53 N.E.3d 319, defendant urges this court to depart from our practice of remanding to allow the trial court to impose fines imposed by the clerk, and instead, adopt the reasoning of the Third District in *People v. Wade*, 2016 IL App (3d) 150417, 64 N.E.3d 703. In *Wade*, after recognizing the routine post-*Castleberry* practice of remanding and directing the trial court to impose vacated fines, the Third District determined remanding to allow the trial court to impose vacated fines unlawfully increases a defendant's sentence. *Id.* ¶ 13.

¶ 16 The State argues *Wade* is inapplicable to the case before us. According to the State, because the trial court stated at the plea hearing, "Defendant [is] also ordered to pay all fines, fees[,] and costs required by law," all fines authorized by statute had already been judicially imposed, and, therefore, defendant's sentence was not illegally low by virtue of a failure to order mandatory fines. Thus, the State, citing *Dillard*, 2014 IL App (3d) 121020, ¶ 14, 14 N.E.3d 1285, asserts the only potential error was a defect in the court's delegation to the circuit clerk the subordinate task of determining the type and amount of each fine. In the State's view, this defect is remedied by remanding to the trial court "with directions to conduct its own independent review of the clerk's payments sheet and recalculate all of the financial charges, including mandatory fines, which defendant must pay according to statute." *Id.* ¶ 15. We have already rejected the State's argument the trial court's statement at the plea hearing ordering defendant to pay all fines, fees, and costs required by law actually imposed *all* statutorily authorized fines. See *supra*, ¶¶ 13-14. This argument remains unpersuasive.

¶ 17 As previously stated, a clerk-imposed fine is void from its inception. If we remand and direct the trial court to impose the vacated clerk-imposed fines, we will increase defendant's sentence by requiring defendant to pay fines he was never legally obligated to pay. This runs afoul of *Castleberry*, 2015 IL 116916, ¶¶ 26-27, 43 N.E.3d 932 (holding absent the filing of a writ of *mandamus*, the State may not seek to increase a defendant's sentence).

¶ 18 Given our finding that these fines were improperly imposed by the clerk, we vacated them. Based on *Castleberry*, we decline to remand the cause to allow the trial court to impose the vacated fines. See also *People v. Daily*, 2016 IL App (4th) 150588, ¶ 29, \_\_\_ N.E.3d \_\_\_ (agreeing with *Wade* and declining the State's request to remand the case for the trial court to impose the mandatory fines).

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we vacate the \$50 court system assessment and the \$10 probation and court services operation assessment. We otherwise affirm the trial court's summary dismissal of defendant's postconviction petition.

¶ 21 Affirmed as modified.