

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
July 14, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150484-U

NO. 4-15-0484

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
TIMOTHY N. SHAW, JR.,)	No. 09CF117
Defendant-Appellant.)	
)	Honorable
)	Teresa K. Righter,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Assessments improperly imposed by the circuit court clerk were vacated without remand.

¶ 2 In August 2011, defendant, Timothy N. Shaw, Jr., was found guilty but mentally ill on one count of predatory criminal sexual assault of a child. In October 2011, the trial court sentenced defendant to 28 years in the Illinois Department of Corrections (IDOC) and ordered him to pay a \$500 sex offender fine and a \$200 sexual assault fine. Defendant appeals, requesting this court to vacate various assessments he alleges were improperly imposed by the circuit clerk. The State concedes. We vacate the following assessments, as listed in the printout from the circuit clerk: (1) \$0.25 "Clerk Op Deduction," (2) \$4.75 "Drug Court," (3) \$50 "Court," (4) \$10 "Medical Costs," (5) \$77.70 "SA Collections," (6) \$5 "Anti-Crime Fund," (7) \$10 "Child Advocacy Fee," (8) \$20 "Violent Crime," and (9) \$8 "State Police Ops." We otherwise affirm.

¶ 3

I. BACKGROUND

¶ 4 In February 2009, the State charged defendant with two counts of predatory criminal sexual assault of a child, a Class X felony (720 ILCS 5/12-14.1(a)(1) (West 2008)). In August 2011, defendant pleaded guilty but mentally ill to one count of predatory criminal sexual assault of a child in a stipulated bench trial, and the State dismissed the other count. In October 2011, the trial court sentenced defendant to 28 years in IDOC with 12 years' mandatory supervised release, and awarded defendant 938 days of pretrial sentence credit. The trial court, in sentencing defendant, further stated, "He shall pay court costs, a sex offender fine of \$500, [and] a sexual assault fine of \$200."

¶ 5 A printout from the Coles County circuit clerk shows, as of January 2017, defendant owes payment on numerous assessments, including the following: (1) \$0.25 "Clerk Op Deduction," (2) \$4.75 "Drug Court," (3) \$50 "Court," (4) \$10 "Medical Costs," (5) \$77.70 "SA Collections," (6) \$5 "Anti-Crime Fund," (7) \$10 "Child Advocacy Fee," (8) \$20 "Violent Crime," and (9) \$8 "State Police Ops."

¶ 6 In October 2011, defendant filed a motion for a new trial and/or arrest of judgment and/or reduction of sentence, which the trial court denied in September 2012. In March 2014, this court upheld defendant's sentence on appeal. *People v. Shaw*, 2014 IL App (4th) 120910-U. In July 2014, defendant filed a *pro se* letter requesting relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)). In August 2014, the trial court summarily dismissed defendant's postconviction petition. In May 2015, defendant filed a motion for leave to file a successive postconviction petition, which the trial court also denied. In June 2015, defendant filed an appeal from the denial of his motion for leave to file a successive postconviction petition, which was docketed as case No. 4-15-0484 and is now before this court.

¶ 7

II. ANALYSIS

¶ 8 Defendant argues, and the State concedes, the circuit clerk improperly imposed various assessments. Circuit clerks may impose statutorily authorized fees and collect on specific fines imposed by court order. *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 18, 63, 18 N.E.3d 912. The imposition of fines is an exclusively judicial act and outside the authority of circuit clerks. *Id.* ¶ 18 (citing *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959). Fines imposed by circuit clerks are void and within the jurisdiction of the appellate court to review. *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437. The abolition of the "void sentence rule" does not preclude appellate jurisdiction over fines imposed by circuit clerks. *People v. Daily*, 2016 IL App (4th) 150588, ¶ 29, 74 N.E.3d 15. The alleged imposition of improper fines or fees presents a question of law, which we review *de novo*. *Id.* ¶ 27.

¶ 9 The statutory basis for the \$0.25 "Clerk Op Deduction" is unclear and is therefore vacated. *People v. Johnson*, 2015 IL App (3d) 140364, ¶¶ 9-10, 46 N.E.3d 937 (\$0.25 "Clerk Op Deduction" among the assessments listed as improperly imposed by the circuit clerk); see also *People v. Williams*, 2013 IL App (4th) 120313, ¶ 19, 991 N.E.2d 914. We vacate the drug court assessment, as it is considered a fine where a defendant did not participate in drug court. *People v. Rexroad*, 2013 IL App (4th) 110981, ¶ 53, 992 N.E.2d 3. We further vacate the \$50 "Court" assessment, as it refers to the \$50 court finance assessment, which is a fine the circuit clerk lacks the authority to impose. *Daily*, 2016 IL App (4th) 150588, ¶ 30, 74 N.E.3d 15 (citing *Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912). We vacate the \$10 medical costs fee (730 ILCS 125/17 (West 2008)) imposed by the circuit clerk, as it is considered a fine. *Larue*, 2014 IL App (4th) 120595, ¶ 57, 10 N.E.3d 959.

¶ 10 Defendant requests we vacate the \$77.70 "SA Collections" assessment (725 ILCS 5/124A-10 (West 2008)) because "it is a percentage of total fines due, and certain fines must be vacated." The State does not request we remand for the reimposition of this assessment. We previously vacated late fees and collection fees where, as in this case, "many of the fines were not judicially imposed." *Smith*, 2014 IL App (4th) 121118, ¶ 88, 18 N.E.3d 912. We vacate the \$77.70 SA collections assessment.

¶ 11 The \$10 anti-crime fund assessment (730 ILCS 5/5-6-3(b)(13) (West 2008)) is a fine, which we vacate for being improperly imposed by the circuit clerk without the trial court's authorization. *People v. Hible*, 2016 IL App (4th) 131096, ¶ 18, 53 N.E.3d 319. We similarly vacate the \$10 "Child Advocacy Fee" (55 ILCS 5/5-1101(f-5) (West 2008)) and the \$20 "Violent Crime" assessment (725 ILCS 240/10 (West 2008)), as both are fines improperly assessed against defendant by the circuit clerk. *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E.2d 1128, 1133 (2010) (child advocacy center fee is a fine); *Smith*, 2014 IL App (4th) 121118, ¶ 63, 18 N.E.3d 912 (citing *People v. Evangelista*, 393 Ill. App. 3d 395, 401, 912 N.E.2d 1242, 1247 (2009)) (violent crime victim fund assessment is a fine). We vacate the \$8 State Police operations assessment, as it is another fine the trial court did not impose. *Williams*, 2013 IL App (4th) 120313, ¶ 18, 991 N.E.2d 914.

¶ 12 III. CONCLUSION

¶ 13 We vacate the following assessments, as listed on the printout from the circuit clerk: (1) \$0.25 "Clerk Op Deduction," (2) \$4.75 "Drug Court," (3) \$50 "Court," (4) \$10 "Medical Costs," (5) \$77.70 "SA Collections," (6) \$5 "Anti-Crime Fund," (7) \$10 "Child Advocacy Fee," (8) \$20 "Violent Crime," and (9) \$8 "State Police Ops." We otherwise affirm.

¶ 14 Affirmed in part and vacated in part.