

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

October 2, 2017

Carla Bender

4th District Appellate Court, IL

2017 IL App (4th) 150500-U

NO. 4-15-0500

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
BRUCE E. WILSON,)	No. 12CF308
Defendant-Appellant.)	
)	Honorable
)	Theresa K. Righter,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann 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 February 2014, defendant, Bruce E. Wilson, pleaded guilty to one count of theft. In April 2014, the trial court sentenced defendant to five years in prison and imposed various fines and fees. Thereafter, the circuit clerk assessed various fines against defendant. In April 2015, defendant filed two postconviction petitions, which the trial court dismissed as frivolous and patently without merit.

¶ 3 On appeal, defendant argues (1) the circuit clerk improperly imposed numerous fines and fees against him and (2) he is entitled to an additional day of sentence credit. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In September 2012, the State charged defendant by information with theft (720 ILCS 5/16-1(a)(2)(A) (West 2012)). In February 2014, defendant pleaded guilty. Following a factual basis, the trial court found defendant's guilty plea to be voluntary.

¶ 6 In April 2014, the trial court sentenced defendant to five years in prison. The court also imposed a \$650 fine, a \$100 Violent Crime Victims Assistance (VCVA) fine, and a \$5 drug court fine. The court ordered defendant to be credited \$645 for time served. Court records also show the circuit clerk assessed various costs, including \$50 for "Court," \$10 for "Medical Costs," \$10 for a "Child Advocacy Fee," \$15 for "State Police Ops," \$170 for "Lump Sum Surcharge" and \$2 for a "SA Automation Fee."

¶ 7 Defendant filed a late notice of appeal in October 2014 but later moved to dismiss his appeal. We granted defendant's motion and dismissed his appeal. *People v. Wilson*, No. 4-14-0871 (January 29, 2015) (dispositional order). In April 2015, defendant filed two *pro se* petitions for postconviction relief under the Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2014)). Defendant alleged (1) ineffective assistance of counsel and (2) the use of "non-probative evidence" at sentencing which prejudiced defendant. In April 2015, the trial court dismissed the petitions, finding them frivolous and patently without merit. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant abandons the arguments made in his postconviction petitions. Defendant argues for the first time on appeal the circuit clerk improperly imposed numerous fines and miscalculated fees. This court has previously addressed the impropriety of the circuit clerk imposing judicial fines. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 55-73, 10 N.E.3d 959. "Although circuit clerks can have 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) 140046, ¶ 69, 51 N.E.3d 970.

¶ 10 In the case *sub judice*, the State concedes the following fines imposed by the circuit clerk must be vacated as void: (1) \$50 court finance fine; (2) \$170 lump-sum surcharge fine; (3) \$10 county jail medical fine; (4) \$10 Child Advocacy fine; and (5) \$15 State Police operations fine. We agree and vacate these fines.

¶ 11 The circuit clerk also imposed a \$2 State's Attorney automation fee. Defendant argues the fee is a fine and must be vacated. In *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117, this court held 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, 74 N.E.3d 15.

¶ 12 Defendant next argues the circuit clerk improperly imposed a \$310 circuit clerk fee in violation of section 27.1a(w)(1)(A) of the Clerks of Courts Act (Clerks Act) (705 ILCS 105/27.1a(w)(1)(A) (West 2014)). Section 27.1a(w)(1)(A) of the Clerks Act provides "the clerk shall be entitled to costs" in a felony criminal case of "a minimum of \$40 and a maximum of

\$100." Defendant argues the \$310 circuit clerk fee exceeds the statutory maximum provided for in the Clerks Act.

¶ 13 The State argues the \$310 circuit clerk fee included bail bond costs of \$230 (see 725 ILCS 5/110-7(f) (West 2014) (the clerk "shall retain as bail bond costs 10% of the amount deposited.")). On January 11, 2013, defendant posted a \$300 cash bond and on October 11, 2013, defendant posted a \$2000 cash bond. The State asserts, after the bail bond costs are credited, the remaining circuit clerk fee did not exceed the \$100 maximum.

¶ 14 In his reply brief, defendant admits he "made two bail deposits, for \$300 and \$2,000," but argues the only fees referenced on the face of the bail bond forms are a \$10 processing fee and \$20 "Bonding" fee, respectively.

¶ 15 Section 110-7(f) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/110-7(f) (West 2014)) provides the clerk of the court "shall retain as bail bond costs 10% of the amount deposited." 725 ILCS 5/110-7(f) (West 2010). The costs referenced by defendant, a \$10 processing fee and \$20 "Bonding" fee, are bond fees and do not reflect 10% of the bond monies deposited. We note the reverse side of each bail bond form signed by defendant advised "[w]hen 10% bond has been posted, and the case has been disposed by dismissal or by final order of the Court, then 90% of the amount posted will be available for refund to the person charged, or to apply to any fines, costs, fees, penalties or judgments assessed in this case. 10% of the amount posted, but not less than \$5.00, will be retained as bail bond costs." Defendant admits he posted \$2300, 10% of the amount of bail. The Clerk's Act required the clerk of the court to retain \$230 as bail bond costs and, in addition, provided for the Clerk to retain a minimum of \$40 and a maximum of \$100 in costs. Thus, we do not vacate the \$310 circuit clerk fee.

¶ 16 Defendant next argues he is entitled to an additional day of credit for time spent in presentence custody. Section 5-4.5-100(b) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-4.5-100(b) (West 2014)) provides an offender shall be given credit on his sentence "for time spent in custody as a result of the offense for which the sentence was imposed."

¶ 17 Defendant failed to challenge his presentence custody credit in the trial court or on direct appeal. He also did not raise this issue in his postconviction petitions. Rather, he now raises this issue for the first time on appeal from the summary dismissal of his petitions. This court cannot grant defendant the relief he seeks because the allegation of a deprivation of a statutory right is not a proper claim under the Act. See *People v. Nelson*, 2016 IL App (4th) 140168, ¶¶ 28-39, 49 N.E.3d 1007; *People v. Morrison*, 2016 IL App (4th) 140712, 64 N.E.3d 821, ¶¶ 13-21. Defendant may seek a remedy by petitioning the trial court to "correct the simple error in arithmetic, as trial courts retain jurisdiction to correct nonsubstantial matters of inadvertence or mistake." *Nelson*, 2016 IL App (4th) 140168, ¶ 39, 49 N.E.3d 1007. We do not have jurisdiction to grant defendant the relief he requests.

¶ 18 III. CONCLUSION

¶ 19 We vacate the following assessments: (1) \$50 court finance fine; (2) \$170 lump-sum surcharge fine; (3) \$10 county jail medical fine; (4) \$10 Child Advocacy fine; and (5) \$15 State Police operations fine. We otherwise affirm defendant's conviction and sentence.

¶ 20 Affirmed in part and vacated in part.