

**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).

2017 IL App (4th) 150657-U

NO. 4-15-0657

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

October 31, 2017

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
ERIC MEDLEY,	)	No. 12CF1080
Defendant-Appellant.	)	
	)	Honorable
	)	Leslie J. Graves,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court, concluding it had jurisdiction over the appeal, affirmed the trial court's dismissal of defendant's postconviction petition but vacated fines improperly imposed by the circuit clerk.

¶ 2 In March 2015, defendant, Eric Medley, filed a *pro se* postconviction petition, which the trial court subsequently dismissed in July 2015. In August 2015, this court granted defendant's motion for leave to file a late notice of appeal.

¶ 3 On appeal, defendant does not challenge the trial court's dismissal of his postconviction petition but, instead, challenges the imposition of certain fines by the circuit clerk. The State, in turn, asserts we lack jurisdiction over the appeal. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In May 2013, defendant entered a guilty plea to the offense of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)) in exchange for a sentence of eight years in prison. The trial court mentioned no costs or fines to be assessed, nor did the written order list any fines. However, the circuit clerk's payment printout listed a total of \$372 in costs assessed to defendant, including (1) a \$50 court systems assessment, (2) a \$5 child advocacy assessment, (3) a \$15 State Police operations assistance assessment, and (4) a \$5 drug court assessment. Defendant did not file a direct appeal.

¶ 6 In March 2015, defendant filed a *pro se* petition for postconviction relief, alleging he received ineffective counsel where his trial counsel failed to (1) advise him of the possibility of raising the affirmative defense of self-defense and (2) negotiate a lesser sentence. He did not raise any issues with respect to the circuit clerk's imposition of fines. On July 7, 2015, the trial court dismissed defendant's petition. In August 2015, defendant filed a motion for leave to file a late notice of appeal, which this court granted.

¶ 7 This appeal followed.

## ¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues this court should vacate the fines improperly imposed by the circuit clerk. However, before we reach the merits of defendant's argument, we must address this court's jurisdiction over the appeal.

### ¶ 10 A. Jurisdiction

¶ 11 The State asserts we lack jurisdiction over this appeal due to the insufficiency of defendant's notice of appeal.

¶ 12 A notice of appeal must be liberally construed. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008) (*Smith I*). However, "a notice of appeal confers jurisdiction

on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *Id.* "Accordingly, notice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal." (Internal quotation marks omitted.) *Id.* at 105, 885 N.E.2d at 1058-59.

¶ 13 Here, the State points out defendant's late notice of appeal failed to identify (1) the trial court's July 7, 2015, order or (2) that he was appealing the dismissal of his postconviction petition. Rather, defendant wrote the judgment date as "4/14/2013" and that the judgment was a "plea."

¶ 14 Addressing this jurisdictional issue requires a more detailed discussion of the procedural steps taken by defendant, steps which include the filing of two separate notices of appeal. The record contains a notice of appeal signed and notarized on August 10, 2015, that properly identified the July 2015 order and that he was appealing the dismissal of his postconviction petition. Although the notice of appeal was notarized on August 10, 2015, the circuit court did not receive the notice of appeal until August 26, 2015.

¶ 15 While the notice of appeal to the trial court was in transit, on August 21, 2015, defendant filed a motion for leave to file a late notice of appeal with this court. In the late notice of appeal, defendant identified the date of judgment as "4/14/2013" and that the judgment was a "plea." Notably, the court docket does not indicate any proceedings occurred on that date, and defendant entered his guilty plea on May 14, 2013. Defendant asserted his notice of appeal was late due to difficulty in obtaining notarization, as the notary working for the prison was away from work for two weeks. This court subsequently granted defendant's motion to file a late

notice of appeal. The appellate court docket recorded the filing of both the notice of appeal filed August 26, 2015, in the trial court and the late notice of appeal filed with this court.

¶ 16 According to the State, defendant is bound by the information contained in the late notice of appeal that failed to identify the judgment he intended to appeal. In support, the State argues this case is analogous to *Smith I*, 228 Ill. 2d 95, 885 N.E.2d 1053.

¶ 17 In *Smith I*, the defendant entered a plea of guilty in November 2004. *Id.* at 98, 885 N.E.2d at 1055. In February 2006, the defendant filed a "Motion to Correct Sentence" which the trial court denied *sua sponte*. *Id.* at 99-100, 885 N.E.2d at 1055-56. The defendant filed a notice of appeal, stating he was appealing the judgment entered in November 2004, even though the issues raised on appeal were related only to the February 2006 trial court order. *Id.* at 105, 885 N.E.2d at 1059. The supreme court concluded,

"Defendant's notice of appeal, no matter how liberally construed, cannot be said to have fairly and adequately set out the judgment complained of—the court's order of February 21, 2006—or the relief sought. The notice not only failed to mention the February 21, 2006, order; it specifically mentioned a different judgment, and only that judgment. This was more than a mere defect in form. Defendant's notice failed to apprise the State of the nature of the appeal. The notice, as it appears in the record, failed to confer jurisdiction on the appellate court to hear defendant's appeal." *Id.*

¶ 18 The supreme court remanded the case back to the appellate court to determine whether the appellate court had jurisdiction over the appeal. *Id.* at 106, 885 N.E.2d at 1059. On

remand, the appellate court dismissed the appeal for lack of jurisdiction. *People v. Smith*, 383 Ill. App. 3d 791, 794, 904 N.E.2d 67, 70 (2008) (*Smith II*).

¶ 19 Some aspects of the present case are similar to those presented in *Smith I*. In this case, defendant filed a late notice of appeal with this court, specifically referencing the "4/4/13" judgment from his plea of guilty, and only that judgment. He did not mention the July 2015 judgment denying his postconviction petition. Thus, if we considered only those facts, this case would be analogous to *Smith*.

¶ 20 However, additional information distinguishes this case from *Smith I*. First, in this case, defendant filed a notice of appeal with the trial court on August 26, 2015, specifically noting he was appealing the July 2015 order denying his postconviction petition. Not only was that notice filed with the trial court, it was also filed with this court. Second, in the late notice of appeal defendant filed with this court, he explained his late notice of appeal resulted from the notary being out of the office for two weeks, which prevented him from filing his notice of appeal on time. The inference to be drawn from such a statement was that defendant was attempting to timely appeal a recent court decision—the July 2015 order dismissing his postconviction petition—rather than the original judgment. In considering all of the notices of appeal filed, we conclude defendant provided sufficient notice that he sought to appeal the court's July 2015 judgment. We therefore have jurisdiction over this appeal.

¶ 21 **B. Clerk-Imposed Fines**

¶ 22 On appeal, defendant does not challenge the trial court's denial of his postconviction petition. Instead, defendant asserts the circuit clerk improperly imposed several fines—(1) a \$50 court systems assessment, (2) a \$5 child advocacy center assessment, (3) a \$15 State Police operations assistance assessment, (4) a \$5 drug court assessment, and (5) a \$100

violent crime victim's assessment—and asks us to vacate those fines. The State does not address this issue in its brief.

¶ 23 "The propriety of the imposition of fines and fees presents a question of law, which this court reviews *de novo*." *People v. Daily*, 2016 IL App (4th) 150588, ¶ 27, 74 N.E.3d 15. Circuit clerks lack the authority to impose fines, and therefore, any fines imposed by the circuit clerk are void from their inception. *Id.* ¶ 28. A void judgment may be challenged at any time, either directly or collaterally. *Id.* ¶ 29.

¶ 24 Here, the trial court did not mention any fines, fees, or costs at the time of imposing sentence. However, the docket entry states, "Cost Only \$372.00." Although the circuit clerk printout shows defendant was assessed a total of \$372 consistent with the court order, the court's order did not provide for the assessment of any fines. "We recognize it is the long-standing practice of the circuit court clerks to impose the fees and costs associated with criminal cases, but this does not excuse the similar treatment of fines, which are a component of the sentence to be imposed by the sentencing judge." *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 176, 55 N.E.3d 117. Because the court did not specifically impose any fines, any fines imposed by the circuit clerk must be vacated.

¶ 25 This court has previously determined the court systems assessment, child advocacy center assessment, and State Police operations assessment constitute fines. *Daily*, 2016 IL App (4th) 150588, ¶ 30, 74 N.E.3d 15. Moreover, the drug court assessment is a fine. *Warren*, 2016 IL App (4th) 120721-B, ¶ 138, 55 N.E.3d 117. Accordingly, these assessments must be vacated. Although defendant also asks this court to vacate the violent crime victim's assessment, we fail to see where any such assessment was imposed. We therefore vacate the (1)

\$50 court-systems assessment, (2) \$5 child-advocacy-center assessment, (3) \$15 State Police operations assistance assessment, and (4) \$5 drug-court assessment.

¶ 26

### III. CONCLUSION

¶ 27

For the foregoing reasons, we affirm the trial court's dismissal of defendant's postconviction petition. We vacate the imposition of the (1) \$50 court-systems assessment, (2) \$5 child-advocacy-center assessment, (3) \$15 State Police operations assistance assessment, and (4) \$5 drug-court assessment.

¶ 28

Affirmed in part and vacated in part.