

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

August 1, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150681-U

NO. 4-15-0681

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
JIMMIE ROSS,)	No. 15CF271
Defendant-Appellant.)	
)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court vacated various fines improperly imposed by the circuit clerk.

¶ 2 In May 2015, defendant, Jimmie Ross, pleaded guilty to the offense of burglary.

In July 2015, the trial court sentenced him to four years in prison.

¶ 3 On appeal, defendant argues the Champaign County circuit clerk improperly imposed a number of fines and miscalculated fees. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In February 2015, the State charged defendant by information with one count of burglary (720 ILCS 5/19-1(a) (West 2014)) and one count of retail theft with a prior theft conviction (720 ILCS 5/16-25(a)(1) (West 2014)). In May 2015, defendant pleaded guilty to burglary, and the State agreed to drop the theft charge.

¶ 6 In July 2015, the trial court sentenced defendant to four years in prison. The

sentencing order required defendant to pay an unspecified Violent Crime Victims Assistance fee and a genetic marker fee, if defendant had not already done so. Thereafter, the circuit clerk issued a document detailing defendant's financial obligations as a result of his conviction, including a \$50 court finance fee, a \$10 arrestee's medical assessment, a \$250 deoxyribonucleic acid (DNA) fee, a \$10 traffic/criminal surcharge assessment, a \$10 State Police services assessment, a \$15 State Police operations assessment, and a \$40 State's Attorney assessment.

¶ 7 In August 2015, defendant filed a motion to reconsider his sentence, which the trial court denied. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues the circuit clerk improperly imposed a number of fines and miscalculated fees that should be vacated or reduced. We agree.

¶ 10 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.

¶ 11 In the case *sub judice*, the State concedes the following fines imposed by the circuit clerk must be vacated as void: (1) \$10 State Police services fine; (2) \$15 State Police operations fine; (3) \$10 arrestee's medical fine; and (4) \$10 traffic/criminal surcharge fine. We agree and vacate these fines.

¶ 12 The State agrees the circuit clerk improperly imposed the \$250 DNA assessment because defendant had previously provided a DNA sample. See *People v. Marshall*, 242 Ill. 2d 285, 303, 950 N.E.2d 668, 679 (2011); 730 ILCS 5/5-4-3(j) (West 2014). This assessment must be vacated.

¶ 13 The circuit clerk also imposed a \$40 State's Attorney assessment. Under section 4-2002(a) of the Counties Code (55 ILCS 5/4-2002(a) (West 2014)), the State's Attorney is entitled to receive \$30 for each felony conviction. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 112, 55 N.E.3d 117. The State concedes defendant was only convicted of one felony in this case, and thus he was only subject to a penalty of \$30. Thus, the State's Attorney assessment must be reduced to \$30.

¶ 14 Defendant also argues the circuit clerk improperly imposed a \$50 court finance fee. 55 ILCS 5/5-1101(c) (West 2014). The State, citing *Warren*, 2016 IL App (4th) 120721-B, ¶ 109, 55 N.E.3d 117, contends the circuit clerk can properly impose the fee for each judgment of guilty. However, this court recently noted *Warren* did not address whether the assessment constituted a fee or fine. *In re Dustyn W.*, 2017 IL App (4th) 170103, ¶ 33. Instead, this court pointed to *Smith*, 2014 IL App (4th) 121118, ¶¶ 47-54, 18 N.E.3d 912, which found the court finance assessment amounted to a fine. *Dustyn W.*, 2017 IL App (4th) 170103, ¶ 33. We continue to follow *Smith* and *Dustyn W.* and find the circuit clerk improperly imposed the court finance assessment. Thus, it must be vacated.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we vacate the contested fines and reduce the State's Attorney assessment. We otherwise affirm defendant's conviction and sentence as modified.

¶ 17 Affirmed in part as modified and vacated in part.