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2017 IL App (4th) 150832-U

NO. 4-15-0832

FILED
December 28, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
REGINALD A. GRANT,	)	No. 15CF4
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The circuit court did not err by denying defendant's motion to withdraw his guilty plea and did not commit plain error in sentencing defendant.

¶ 2 In February 2015, a grand jury indicted defendant, Reginald A. Grant, with one count of unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(e) (West 2014)) and one count of unlawful possession of cannabis (720 ILCS 550/4(e) (West 2014)). At a May 2015 hearing, defendant pleaded guilty to unlawful possession of cannabis with the intent to deliver, and the Woodford County circuit court dismissed the unlawful possession of cannabis charge. At the June 2015 sentencing hearing, the court sentenced defendant to five years' imprisonment. In July 2015, defendant filed a motion to withdraw his guilty plea and later an amended motion to withdraw his guilty plea. After a September 2015 hearing, the court denied defendant's amended motion to withdraw his guilty plea.

¶ 3 Defendant appeals, contending (1) the circuit court should have granted his motion to withdraw his guilty plea, (2) the court improperly considered compensation as a factor in aggravation when sentencing him, and (3) several of his fines and fees were improperly imposed. We affirm in part as modified, vacate in part, and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 On January 14, 2015, the State charged defendant by information with one count of unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(e) (West 2014)) and one count of unlawful possession of cannabis (720 ILCS 550/4(e) (West 2014)) based on defendant's actions on January 13, 2015. Also, on January 14, 2015, defendant appeared in court and a mittimus for failure to give bond was issued, which commanded the sheriff to take custody of defendant and deliver him to the jail. The sheriff signed the document, indicating he had done so, and a $26 sheriff's fee is noted. On February 5, 2015, the grand jury indicted defendant on the same charges, and he appeared in court. That same day, another mittimus for failure to give bond was issued, which also contained a $26 sheriff's fee. On February 6, 2015, defendant appeared in court on his motion for a bond reduction, and a third mittimus for failure to give bond was issued, containing the $26 sheriff's fee. Defendant's jury trial was set for May 18, 2015.

¶ 6 On May 14, 2015, the circuit court held a hearing, which it began by noting it had been asked to take the case up that day. Defense counsel presented the court with a written plea agreement signed by defendant. The prosecutor clarified defendant was pleading guilty to the unlawful possession of cannabis with the intent to deliver charge (720 ILCS 550/5(e) (West 2014)), and the State would seek dismissal of the unlawful possession of cannabis charge. The court then questioned defendant about his substance use. After questioning him, the court noted

it just needed to know defendant was coherent. The court then proceeded to admonish defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). Defendant asked the court to repeat the question of whether anyone had forced him or coerced him to enter the guilty plea. After the second time the court asked the question, defendant responded, "[N]o, I guess." The court then explained to defendant his constitutional right not to plead guilty and explained to defendant it needed to know if someone was making him plead guilty. Defendant then answered "No" to whether anyone was forcing or coercing him to plead guilty. The court then asked if anyone was putting him under duress to plead guilty. Defendant indicated he did not understand, and the court explained what duress meant, and defendant answered the question in the negative. The court then asked several questions to ensure defendant wanted to plead guilty. After hearing the factual basis for the plea, the court accepted defendant's guilty plea to one count unlawful possession of cannabis with the intent to deliver and dismissed the unlawful possession of cannabis count.

¶ 7 On May 26, 2015, a sheriff's fee document was filed with a total of $28.50 for delivering a subpoena to police officer Andrew Yedinak. On June 26, 2015, the circuit court held defendant's sentencing hearing. The State presented the testimony of Officer Yedinak, and defendant testified on his own behalf. Officer Yedinak testified he had experience in narcotics investigations and had received specialized training. During his experience and training, he was aware of how much a pound of cannabis sold in the area. The street value of the cannabis depended on the type. Mexican brick weed was low grade, and hydroponic cannabis was a higher grade. The amount of cannabis recovered in this case was 875.6 grams, which was "a little bit short of two pounds." Officer Yedinak testified the street value of the cannabis recovered was just short of $9000, which he explained was in the $8000 to $8500 range. On

cross-examination, he testified low-grade cannabis would sell for $1200 a pound. If sold in grams, low-grade cannabis would sell for $5 to $10 a gram, and higher grade cannabis would go for $20 a gram. On redirect, Officer Yedinak admitted he could not recall exactly what the cannabis in this case looked like but did recall it was not full of stems and seeds, which was indicative of Mexican brick weed. He considered the cannabis recovered in this case to be mid-grade cannabis with a value in the $3000 to $4000 range.

¶ 8 Defendant testified the cannabis was regular weed, not mid-grade or hydroponic. He had been blind since 2009 and had many health problems. Defendant feared for his safety in prison since he could not see. He smoked cannabis to reduce his stress and help him sleep. He had continued to smoke cannabis since his arrest in this case. After his testimony, defendant spoke in allocution. Defendant stated he was not selling cannabis to make money to buy guns, or drugs, or stuff. He was sharing it with a couple of friends, one of which passed away in May. Defendant felt proud to help people feel better on bad days. He also talked about giving his sister cannabis when she was dying of cancer. Defendant denied selling cannabis was all about the money. It gave him a little bit of purpose and a bit of pride to help somebody.

¶ 9 In sentencing defendant, the circuit court first found the only mitigating factor was defendant's criminal conduct did not cause serious harm to another. The court then said the following: "Factors in aggravation, it appears the defendant received compensation for committing the offense. He has a prior history of criminal activity and the sentence is necessary to deter others from committing the same crime." The court then discussed selling cannabis was still illegal in Illinois. It then addressed defendant's lengthy criminal history and why probation was not an appropriate sentence for defendant. The court also stated it found defendant was making a living from selling drugs and addressed defendant's fear of prison. It concluded by

sentencing defendant to a five year prison term. The court filed both a written sentencing judgment and a supplemental sentencing order, which addressed defendant's financial obligations in this case.

¶ 10 On July 9, 2015, defendant filed a timely motion to withdraw his guilty plea, asserting he was under the influence of intoxicating drugs when he pleaded guilty. Defense counsel filed an amended motion to withdraw defendant's guilty plea, asserting defendant was under the influence of Zoloft and other medical medications at the time of his guilty plea and was unable to make a meaningful choice about whether to plead guilty. Defense counsel also filed a certificate as required by Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014).

¶ 11 On September 9, 2015, the circuit court held a hearing on defendant's motion to withdraw his guilty plea. At the hearing, defendant sought to introduce a document listing the side effects of Zoloft, but the court sustained the State's lack of foundation objection. Defendant testified he usually took Zoloft but had not taken it since being incarcerated. He had taken Zoloft on the day he pleaded guilty. Defendant testified the drug caused confusion and made him not even try to understand. He denied having made a decision on whether or not to plead guilty before the hearing and just ended up pleading guilty out of panic. When asked why he answered "no" to the court's question at the plea hearing about being under the influence of drugs, defendant testified he thought the court was talking about illegal substances. He testified he only understood some of the court's questions at the plea hearing. His mind was not clear. Defendant found out his taking Zoloft "made a difference" after talking to another inmate in the county jail.

¶ 12 After hearing the evidence and the parties' arguments, the circuit court denied defendant's motion to withdraw his guilty plea. The court noted the May 14, 2015, hearing was at defendant's request for the court to entertain his plea. Moreover, it explained that, at the plea

hearing, defendant's waffling was due to his not understanding terms because defendant answered the question once the court explained the terms. Even if he was on drugs, the court stated it took time with defendant, and defendant's answers were of a "deliberative nature."

¶ 13 On October 6, 2015, defendant mailed his notice of appeal with a sufficient proof of service as required by Illinois Supreme Court Rule 12(b)(3) (eff. Sept. 19, 2014). Thus, under Illinois Supreme Court Rule 373 (eff. Sept. 19, 2014), defendant's notice of appeal was timely filed on October 6, 2015. See Ill. S. Ct. R. 606 (eff. Dec. 11, 2014). The notice of appeal also sufficiently complied with Illinois Supreme Court Rule 606(d) (eff. Dec. 11, 2014). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014).

¶ 14 II. ANALYSIS

¶ 15 A. Motion to Withdraw Guilty Plea

¶ 16 We first address defendant's contention the circuit court erred in denying his motion to withdraw his guilty plea because the plea was not knowing or voluntary due to the side effects of the medication he was taking. The State disagrees with defendant's contention. Generally, whether to grant or deny a motion to withdraw a guilty plea rests in the circuit court's sound discretion, and thus this court applies the abuse of discretion standard of review. *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. A circuit court abuses its discretion "when its decision is 'fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it.' " *People v. Kladis*, 2011 IL 110920, ¶ 23, 960 N.E.2d 1104 (quoting *People v. Ortega*, 209 Ill. 2d 354, 359, 808 N.E.2d 496, 500-01 (2004)).

¶ 17 A defendant lacks the absolute right to withdraw his or her guilty plea. *Hughes*, 2012 IL 112817, ¶ 32. Rather, a defendant must show a manifest injustice under the facts

involved. *Hughes*, 2012 IL 112817, ¶ 32. "Withdrawal is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial." *Hughes*, 2012 IL 112817, ¶ 32.

¶ 18 Here, defendant asserts his plea was not knowing and voluntary because he was taking Zoloft at the time of the plea hearing. In *People v. Bryant*, 2016 IL App (5th) 140334, ¶ 31, 54 N.E.3d 309, the defendant raised a similar argument, asserting his ability to knowingly and voluntarily plead guilty had been impaired by his ingestion of Klonopin. In determining the circuit court did not err by denying the defendant's motion to withdraw his guilty plea, the reviewing court applied the law applicable to fitness to stand trial. The *Bryant* court stated the following:

> "Every defendant is presumed to be fit to stand trial, or to plead, and be sentenced. [Citation.] A defendant is fit to stand trial unless a mental or physical problem renders him unable to understand the nature and purpose of the proceedings against him or to aid in his defense. [Citation.] A defendant who is receiving psychotropic drugs or medications is not presumed to be unfit solely by virtue of the receipt of those drugs or medications. 725 ILCS 5/104-21(a) (West 2010). A defendant claiming that he was unfit has the burden of proving that when he stood trial or pled guilty, there were facts in existence which raised a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate in his defense and cooperate with counsel. [Citation.] Such facts include the defendant's behavior and demeanor and any representations made by defense counsel regarding the defendant's competence. [Citation.] A circuit

court's ruling on the issue of fitness will not be reversed unless it is against the manifest weight of the evidence." (Internal quotation marks omitted.) *Bryant*, 2016 IL App (5th) 140334, ¶ 32.

¶ 19 Here, the only evidence defendant took Zoloft at the time of the plea hearing was defendant's own testimony at the hearing on his motion to withdraw. That testimony was contrary to defendant's statements at the plea hearing, where the court asked defendant if he was "under the influence of any other substance right now," and defendant said, "No." The court did not have to believe defendant's testimony he answered "No" because he thought the court was talking about illegal substances.

¶ 20 Moreover, at the hearing on the motion to withdraw, defendant suggested he did not know before the plea hearing he was going to plead guilty that day. However, in denying defendant's motion to withdraw, the circuit court explained the plea hearing was scheduled solely for the purpose of entertaining defendant's guilty plea. The record supports the court's explanation. Additionally, at the hearing on the motion to withdraw, defendant testified the Zoloft caused him to not understand things, and he only understood some of the circuit court's questions at the plea hearing. As the circuit court noted, any confusion defendant had during the plea hearing related to defendant's understanding of terms. After the court explained a term to defendant, defendant answered the question. A review of the transcript of the plea hearing supports the court's explanation any confusion defendant expressed was due to the terms used by the court. Thus, defendant's behavior and demeanor did not suggest he was having trouble understanding the proceedings.

¶ 21 This case is distinguishable from *People v. Morreale*, 412 Ill. 528, 534, 107 N.E.2d 721, 725 (1952), cited by defendant, where our supreme court reversed the denial of a

motion to withdraw the defendant's guilty plea. In determining reversal was warranted, the supreme court noted (1) the hurried consultations between the prosecutor, defense counsel, defense counsel's associate, and the defendant during a recess of court and (2) the pressure exerted by the prosecutor. *Morreale*, 412 Ill. at 532-33. Here, the plea hearing was scheduled for the purpose of taking defendant's plea, and the court took its time explaining the admonitions and making sure defendant understood them. Also, the record in this case does not show any pressure exerted by the prosecutor.

¶ 22 Accordingly, we find the circuit court's conclusion defendant's guilty plea was knowing and voluntary was not against the manifest weight of the evidence, and that court did not abuse its discretion in denying defendant's motion to withdraw defendant's guilty plea.

¶ 23 B. Sentencing Factor

¶ 24 Defendant next contends the circuit court improperly considered compensation as an aggravating factor in sentencing defendant. He acknowledges he failed to raise this issue in the circuit court and asks us to review it under the plain error doctrine (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)). The State asserts defendant has failed to establish plain error.

¶ 25 The plain error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the

> closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

We begin our plain error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189. If error did occur, this court then considers whether either of the two prongs of the plain error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190.

¶ 26 Under Illinois law, it is well established a circuit court cannot consider a factor inherent in the offense as an aggravating factor at sentencing. *People v. Johnson*, 2017 IL App (4th) 160920, ¶ 46. " '[C]ompensation is an implicit factor in most drug transactions' and generally may not be considered as an aggravating factor." *Johnson*, 2017 IL App (4th) 160920, ¶ 47 (quoting *People v. McCain*, 248 Ill. App. 3d 844, 851, 617 N.E.2d 1294, 1299 (1993)). In this case, the circuit court did state, "Factors in aggravation, it appears the defendant received compensation for committing the offense." However, defendant and defense counsel had suggested defendant did not expect to receive compensation from his delivery of cannabis. In his statement of allocution, defendant, *inter alia*, painted delivering marijuana as a noble endeavor and downplayed the financial compensation aspect of his crime. He stated it was not all about the money. Defendant felt supplying marijuana gave him a bit of purpose and pride, and it allowed him to help people. He told stories of comforting the dying with marijuana. Defense counsel contended defendant was not out selling cannabis to strangers. Defendant was selling it or giving it to friends and relatives. To the contrary, as the court noted in its oral ruling, defendant's statements in his presentence investigation report indicated he made a living from selling marijuana. Thus, defendant presented the court with a factual dispute of whether or not compensation was at issue in this case. Accordingly, under the facts of this case, we do not find

the court erred by stating compensation was one of the aggravating factors in this case.

¶ 27 Even if the circuit court's finding was erroneous, we disagree with defendant it satisfies the second prong of the plain error doctrine. As this court has explained, the plain error doctrine does not constitute a general saving clause, which preserves for review all errors affecting substantial rights whether or not they have been brought to the attention of the circuit court. *Johnson*, 2017 IL App (4th) 160920, ¶ 54. Rather, the doctrine establishes a narrow and limited exception to the general forfeiture rule with the purpose of protecting defendant's rights and the integrity and reputation of the judicial process. *Johnson*, 2017 IL App (4th) 160920, ¶ 54. Since *People v. Rathbone*, 345 Ill. App. 3d 305, 311, 802 N.E.2d 333, 338 (2003), this court has declined to automatically apply the plain error doctrine to forfeited sentencing claims. *Johnson*, 2017 IL App (4th) 160920, ¶ 54. Instead, the defendant bears the burden of proving the reversible error "was sufficiently grave that it deprived the defendant of a fair sentencing hearing." (Internal quotation marks omitted.) *Johnson*, 2017 IL App (4th) 160920, ¶ 54 (quoting *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 26, 25 N.E.3d 1).

¶ 28 In *Johnson*, 2017 IL App (4th) 160920, ¶ 55, this court found the circuit court's consideration of multiple improper factors raised the seriousness of the circuit court's error. There, it appeared from the record the "improper factors impacted the court's sentencing decision, which, in turn, affected the fairness of defendant's sentencing hearing, as the court's consideration of these factors was unlawful." *Johnson*, 2017 IL App (4th) 160920, ¶ 55. Accordingly, this court reversed the defendant's sentence under the second prong of the plain error analysis, but stressed its opinion did not stand for the proposition every case involving a circuit court's consideration of an improper sentencing factor automatically constitutes plain error. *Johnson*, 2017 IL App (4th) 160920, ¶ 56.

¶ 29 In this case, the circuit court at most considered only one improper factor. Moreover, the court emphasized defendant's terrible criminal record, which included 40 misdemeanors and 4 felonies. The court also discussed defendant's inability to comply with the law, discussing how defendant violated his bond and continued to use illicit substances. The court's mentioning of compensation was a small part of the court's statements in sentencing defendant. Thus, unlike *Johnson*, it does not appear from the record the alleged improper sentencing factor affected the court's sentencing decision.

¶ 30 Additionally, we recognize that, in determining whether the circuit court's consideration of an improper factor constitutes plain error under the second prong, the Second District has considered the following: "(1) whether the trial court made any dismissive or emphatic comments in reciting its consideration of the improper factor; and (2) whether the sentence received was substantially less than the maximum sentence permissible by statute." *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 18, 973 N.E.2d 459. However, in finding plain error, the *Abdelhadi* court pointed out the circuit court's short comments did not show how much weight it placed on the improper factor. Here, the circuit court's comments were lengthy, and thus the short amount of time the court spent discussing the compensation factor indicates the court placed little weight on it. Thus, we disagree with defendant's suggestion plain error occurred because the court did not make any dismissive or emphatic comments regarding the compensation factor.

¶ 31 Accordingly, we do not find the circuit court's statements about compensation constituted plain error on the facts of this case.

¶ 32 C. Fines and Fees

¶ 33 Last, defendant challenges several fines and fees. Specifically, he challenges (1)

the $4000 street value fine, (2) the $50 court finance assessment, (3) the $1412 Violent Crime Victims Assistance Act fine, (4) the $3530 statutory surcharge, (5) portions of the sheriff's fees, and (6) the $180 clerk fee. Defendant recognizes he failed to raise these issues in the circuit court and contends we should address them under the plain error doctrine.

¶ 34 1. *Street Value Fine*

¶ 35 Defendant first challenges his $4000 street value fine, contending no evidence supported that amount. We find no error occurred.

¶ 36 The street value fine is created by section 5-9-1.1(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-9-1.1(a) (West 2014)), which provides the following:

> "When a person has been adjudged guilty of a drug related offense involving possession or delivery of cannabis ***, in addition to any other penalty imposed, a fine shall be levied by the court at not less than the full street value of the cannabis or controlled substances seized.
>
> 'Street value' shall be determined by the court on the basis of testimony of law enforcement personnel and the defendant as to the amount seized and such testimony as may be required by the court as to the current street value of the cannabis or controlled substance seized."

¶ 37 In *People v. Lewis*, 234 Ill. 2d 32, 46, 912 N.E.2d 1220, 1229 (2009), our supreme court held the circuit court erred in imposing a "street value fine without an evidentiary basis for the current value of the controlled substance seized." The supreme court explained an "evidentiary basis may be provided by testimony at sentencing, a stipulation to the current value, or reliable evidence presented at a previous stage of the proceedings." *Lewis*, 234 Ill. 2d at 46. In *Lewis*, 234 Ill. 2d at 46, it was undisputed the record contained no evidence on the current

street value of the controlled substance.

¶ 38 Unlike in *Lewis*, testimony at sentencing was provided about the current value of the cannabis possessed by defendant. Officer Yedinak testified the amount of cannabis was 875.6 grams, which was just short of 2 pounds. He explained the entire amount of cannabis would sell for just short of $9000, which he said would be in the $8000 to $8500 range. On cross-examination, Officer Yedinak testified low-grade cannabis would sell for around $1200 a pound. On redirect, he testified he could not recall if the cannabis at issue was hydroponic, the highest grade, with a value of around $8000. Officer Yedinak did recall the cannabis was not full of stems and seeds, which would be expected in low-grade cannabis. He considered the cannabis to be mid-grade cannabis with a value in the $3000 to $4000 range. Defendant testified the cannabis was regular weed, not hydroponic or mid-grade.

¶ 39 Defendant argues the aforementioned testimony was not definitive enough for the circuit court to calculate the street value fine. We disagree. The officer testified about three different kinds of cannabis and explained why he believed the cannabis defendant possessed was mid-grade cannabis and gave a range of the value for the amount of cannabis defendant possessed. We find that testimony was sufficient for the circuit court to impose a fine within the range the officer testified. Since we have found no error, plain error review is not warranted.

¶ 40 2. *Court Finance Assessment*

¶ 41 Defendant next contends the circuit clerk imposed the $50 court finance assessment (55 ILCS 5/5-1101(c)(1) (West 2014)), which is a fine that must be imposed by the circuit court. The State disagrees, asserting the circuit court approved the fine because it was part of the court costs calculated by the circuit clerk that the court approved when it signed the supplemental sentencing order. We disagree with the State's contention. Even if the court

finance assessment was part of the court costs determined by the circuit clerk, the circuit court did not itself impose the fine as it was not specifically delineated on the supplemental sentencing order.

¶ 42 "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." *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. A void judgment can be challenged " 'at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)).

¶ 43 We agree with defendant the $50 court finance assessment is a fine. See *Smith*, 2014 IL App (4th) 121118, ¶ 54. Since the fine was not imposed by the circuit court, it is void and must be vacated.

¶ 44 3. *Violent Crime Victims Assistance Act (VCVA) Fine*

¶ 45 Defendant also argues the circuit court erred in imposing the $1412 fine under section 10(b) of the VCVA (725 ILCS 240/10(b) (West 2014)). The State agrees and does not challenge defendant's contention of plain error.

¶ 46 Section 10(b)(1) of the VCVA (725 ILCS 240/10(b)(1) (West 2014)) imposes a $100 fine for any felony committed on or after July 1, 2012. Accordingly, the circuit court erred by imposing a $1412 fine, and thus we reduced the VCVA fine to $100.

¶ 47 4. *Statutory Surcharge*

¶ 48 Defendant contends we should vacate the $3530 statutory surcharge imposed

under section 5-9-1(c) of the Unified Code (730 ILCS 5/5-9-1(c) (West 2014)) and remand for recalculation because the circuit court erred in imposing the $4000 street value fine and the clerk improperly imposed the $50 court finance assessment. The State asserts we should vacate the statutory surcharge based on the improper amount of the VCVA fine, and defendant agrees. We disagree with both parties.

¶ 49 First, we have rejected defendant's argument the $4000 street value fine lacked an evidentiary basis. Second, defendant has failed to point out anything in the record that suggests the court finance assessment was included in calculating the statutory surcharge. The court finance assessment was not listed on the supplemental sentencing judgment as a fine. Moreover, defendant has failed to do any calculations, indicating the fine was included in the statutory surcharge calculation. Last, with the older versions of the VCVA fine, this court held the statutory surcharge is calculated before the VCVA fine is determined. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 131, 55 N.E.3d 117 (citing *People v. Williams*, 2013 IL App (4th) 120313, ¶ 21, 991 N.E.2d 914; *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 24, 979 N.E.2d 1023). Again, defendant has failed to show the amount of the VCVA fine was included in the calculation of the statutory surcharge. Thus, we find vacature and remand are not warranted.

¶ 50 5. *Fees*

¶ 51 Defendant also asserts the circuit clerk erred in calculating its fee under section 105/27.1a(w)(1)(A) of the Clerks of Courts Act (705 ILCS 105/27.1a(w)(1)(A) (West 2014)) and the sheriff's fee under section 4-5001 of the Counties Code (55 ILCS 5/4-5001 (West 2014)). The State contends a portion of the clerk fee may be costs allowed under section 110-7(f) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-7(f) (West 2014)), and section 4-5001 of

the Counties Code allows county boards to increase the sheriff's fees by ordinance. The State's assessment of the clerk fee may be correct as section 110-7(f) uses mandatory language and the total amount of bond was not reduced by the mandatory costs. Here, the State's arguments are not clearly meritless, and more evidence is needed to properly address defendant's fee arguments. Thus, we find remand is warranted for the circuit court to assess the propriety of the amount of both the clerk fee and the sheriff's fee.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we (1) vacate the $50 court finance assessment, (2) modify the sentencing judgment to show a $100 VCVA fine, and (3) affirm the Woodford County circuit court's judgment in all other respects. Additionally, we remand the cause to the circuit court for it to determine the propriety of the clerk and sheriff's fees. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 54 Affirmed in part as modified and vacated in part; cause remanded with directions.