

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) 160928-U

NO. 4-16-0928

FILED

June 7, 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.)	Logan County
MATTHEW L. HENDERSON,)	No. 14CF98
Defendant-Appellant.)	
)	Honorable
)	William G. Workman,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed in part, finding defendant was not entitled to an additional day of sentence credit. The court also vacated various assessments imposed against defendant.

¶ 2 In October 2015, defendant, Matthew L. Henderson, pleaded guilty to the offense of unlawful possession of a controlled substance. In January 2016, the trial court sentenced him to five years in prison and imposed various fines and fees.

¶ 3 On appeal, defendant argues (1) he is entitled to an additional day of sentence credit and (2) this court should vacate various assessments. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In September 2014, the State charged defendant by information with one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)), alleging he knowingly possessed a substance containing cocaine. In October 2015, defendant pleaded

guilty, and the State agreed to recommend a sentence cap of five years in prison.

¶ 6 In January 2016, the trial court sentenced defendant to five years in prison and awarded him one day of credit for time spent in custody on September 13, 2014. In a supplemental sentencing order, the court imposed the following assessments: (1) a \$2,000 fine; (2) a \$100 Violent Crime Victims Assistance Fund assessment; (3) a \$10 probation and court service operations fee; (4) a \$2 State's Attorney records fee; (5) a \$10 drug court fee; (6) a \$500 mandatory assessment; (7) a \$100 drug trauma fund fee; (8) a \$5 drug spinal cord injury fee; (9) a \$100 drug lab analysis fee; (10) a \$25 Crime Stopper's contribution; (11) a \$10 county jail medical assessment; and (12) a \$30 juvenile records expungement fee. The court also checked a box for the statutory surcharge but did not list a dollar amount. The court applied \$5 in pretrial detention credit.

¶ 7 In January 2016, defense counsel filed a motion to reconsider defendant's sentence. In February 2016, defendant filed a *pro se* motion for a reduction of his sentence. In March 2016, the trial court denied the motions. Defendant appealed, and this court remanded for the filing of a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). *People v. Henderson*, No. 4-16-0178 (Sept. 8, 2016) (order on agreed motion for summary remand).

¶ 8 In October 2016, defense counsel filed a Rule 604(d) certificate and filed an amended motion to reconsider defendant's sentence. In December 2016, the trial court denied the motion. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Sentence Credit

¶ 11 In his opening brief, defendant argues he is entitled to one additional day of

sentence credit for time spent in custody and, thus, to an additional \$5 in *per diem* monetary credit against his fines. In its brief, the State argues defendant posted bond on the same day of his arrest and is not entitled to any additional credit. In his reply brief, defendant concedes he is not entitled to an additional day of credit. Therefore, we need not address this issue further.

¶ 12 B. Assessments

¶ 13 Defendant argues this court should vacate the \$15 State Police operations assessment and the lump-sum surcharge as improperly imposed by the circuit clerk. Defendant also argues the \$25 Crime Stopper’s “contribution” was improperly imposed by the trial court and must be vacated.

¶ 14 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.

¶ 15 1. *State Police Operations Fine*

¶ 16 In the case *sub judice*, the State concedes the \$15 State Police operations fine was improperly imposed by the circuit clerk and is therefore void. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030. Because the clerk imposed this fine after sentencing, we vacate it.

¶ 17 2. *Lump-Sum Surcharge*

¶ 18 Defendant argues the lump-sum surcharge constitutes a fine that was improperly imposed by the circuit clerk. The surcharge adds an additional \$15 fine for every \$40 in fines imposed on defendant. 730 ILCS 5/5-9-1(c) (West 2014). This court has found the surcharge is a fine, which circuit clerks lack the authority to impose. *People v. Daily*, 2016 IL App (4th) 150588, ¶ 30; see also *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 129, 55 N.E.3d 117. In contrast to defendant, however, the State argues the circuit clerk did not impose this fine. Instead, the State contends the trial court judicially imposed the surcharge by checking the appropriate box on its written supplemental order, although it left the dollar amount blank. The State contends we should remand with instructions for the trial court to determine the amount for the lump-sum surcharge, as it would not constitute an “increase” in punishment.

¶ 19 We find the State’s argument unpersuasive. Here, the trial court did not itself assess the lump-sum surcharge. See *People v. Wade*, 2016 IL App (3d) 150417, ¶ 13, 64 N.E.3d 703. Thus, the circuit clerk’s imposition of the \$750 surcharge is void and must be vacated. See *Smith*, 2014 IL App (4th) 121118, ¶ 63, 18 N.E.3d 912 (stating “[a]bsent a court order imposing a specific fine, it is well established the clerk of a court, as a nonjudicial member of the court, has no power to levy fines”); *People v. Chester*, 2014 IL App (4th) 120564, ¶ 35, 5 N.E.3d 227 (stating the task of imposing fines may not be delegated to the circuit clerk). Moreover, remanding for the trial court to determine the amount of the lump-sum surcharge would be improper, as it would increase defendant’s sentence in violation of our supreme court’s decision in *People v. Castleberry*, 2015 IL 116916, ¶ 24, 43 N.E.3d 932. See *Wade*, 2016 IL App (3d) 150417, ¶ 13, 64 N.E.3d 703. Thus, we decline to do so. If the State wants to pursue the surcharge, “it must file a petition for writ of *mandamus* seeking an order requiring the trial court to impose the statutorily required fines.” *Wade*, 2016 IL App (3d) 150417, ¶ 13, 64 N.E.3d 703.

¶ 20

3. *Crime Stopper's Assessment*

¶ 21

Defendant argues the \$25 Crime Stopper's assessment was improperly imposed by the trial court, and the State concedes it should be vacated. This court has noted the Crime Stopper's assessment should only be imposed where a defendant receives a sentence of probation, conditional discharge, or supervision. *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002). As defendant received a sentence of imprisonment here, this assessment is void and must be vacated.

¶ 22

III. CONCLUSION

¶ 23

For the reasons stated, we vacate the contested fines and decline the State's request for remand. We otherwise affirm defendant's conviction and sentence. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24

Affirmed in part and vacated in part.