

**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).

2018 IL App (4th) 150734-U

NO. 4-15-0734

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

January 9, 2018

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.	)	McLean County
ROCHELLE LEA POE-FREEHILL,	)	No. 11CF1092
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Steigmann and DeArmond concurred in the judgment.

**ORDER**

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

¶ 2 In July 2012, defendant, Rochelle Lea Poe-Freehill, entered an open plea to one count of prostitution, a Class 4 felony. 720 ILCS 5/11-14(a), (b) (West 2012). The trial court sentenced her to 30 months of probation and 180 days in jail with credit for 180 days served. Defendant was ordered to pay “all mandatory fines, fees, and assessments.” In October 2014, the State filed a petition to revoke defendant’s probation, which was granted. In June 2015, the court resentenced defendant to three years in prison. Defendant appeals, arguing the circuit clerk improperly imposed various fines, which must be vacated. We agree with defendant and vacate the clerk-imposed fines.

¶ 3 I. BACKGROUND

¶ 4 In July 2012, defendant entered an open plea to one count of prostitution, a Class 4 felony (720 ILCS 5/11-14(a), (b) (West 2012)), and on September 14, 2012, the trial court sentenced her to 30 months probation and 180 days in jail with credit for 180 days served. The order of probation, signed by the court, ordered defendant to pay a probation service fee of \$25 per month as well as “all mandatory fines, fees, and assessments.”

¶ 5 In the written supplemental sentencing order, signed by the trial court on September 14, 2012, the court ordered defendant to pay the following: (1) court costs; (2) \$25 monthly probation service fee; (3) \$20 statutory surcharge; (4) \$8 “VCVA” penalty; (5) \$10 drug court fee; (6) \$15 child advocacy center fee; (7) \$30 juvenile records expungement fine; (8) \$25 parole violator fine; and (9) \$2 State’s Attorney record fee. The court awarded defendant \$80 in pretrial detention credit.

¶ 6 Three days later, on September 17, 2012, the circuit clerk’s notice to party reflected defendant owed the following assessments: (1) \$100 circuit clerk fee; (2) \$20 lump-sum surcharge; (3) \$8 violent crime victim fund; (4) \$30 State’s Attorney fee; (5) \$5 court automation fee; (6) \$50 court system fee; (7) \$25 security fee; (8) \$5 document storage fee; (9) \$10 probation and court services operation fee; (10) \$2 State’s Attorney records automation fee; (11) \$5 state police operations assistance fee; and (12) \$750 in probation fees. The notice to party showed the \$80 of awarded pretrial credit covered the drug court fee, child advocacy center fee, juvenile records expungement fine, and parole violator fine. The notice to party was not signed by the trial court.

¶ 7 In October 2014, the State filed a petition to revoke defendant’s probation for driving while license revoked (DWR) (625 ILCS 5/6-303(a) (West 2014)) and committing aggravated battery (720 ILCS 5/12-3.05(d)(11), (h) (West 2014)). In May 2015, the trial court

revoked defendant's probation after a hearing was held on the petition in conjunction with the aggravated battery jury trial.

¶ 8 In June 2015, defendant was resentenced to three years in prison with credit for 282 days previously served. The circuit clerk's notice to party filed on June 29, 2015, reflected the same assessments as the original notice to party. At resentencing, there were no changes made to the supplemental sentencing order, and the court did not sign a new supplemental sentencing order. In July 2015, the trial court denied defendant's motion to reconsider her sentence.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the circuit clerk improperly imposed (1) a \$50 court systems fee and (2) a \$5 state police operations assistance fee. The State argues the two assessments are not void, clerk-imposed fines because the trial court judicially imposed the fines as a condition of probation, incorporating by reference, all fines set forth in the clerk's fine/cost sheet. We agree with defendant and review *de novo*. *People v. Daily*, 2016 IL App (4th) 150588, ¶ 27, 74 N.E.3d 15.

¶ 12 While circuit clerks have statutory authority to impose a fee, they do not have authority to impose a fine, where a fine is exclusively a judicial act. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Circuit-clerk-imposed fines are void from their onset. *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. The two assessments defendant challenges are both fines. See *Daily*, 2016 IL App (4th) 150588, ¶ 30 (court systems fee is a fine); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030 (state police operations assistance fee is a fine).

¶ 13 We must determine whether the circuit court imposed the two fines. The State, without citation to any authority, argues the two fines are a condition of probation incorporated into the clerk's fine/cost sheet, where the court ordered defendant to pay "all mandatory fines, fees, and assessments." The State relies on a docket entry from September 14, 2012, at the probation hearing, where defendant was sentenced to pay fines and costs per the court signed supplemental sentencing order, to support its argument that the two fines were judicially imposed.

¶ 14 The remainder of the record contradicts this argument. The two fines at issue were not listed in the order but rather the clerk's notice to party was the first time the \$50 court systems fee and the \$5 state police operations assistance fee were mentioned. The State does not have a compelling argument to infer the earlier supplemental sentencing order incorporates the notice to party where the record does not indicate the trial court signed the notice to party and where the notice to party was not filed until three days after the hearing.

¶ 15 Even if the probation order could be reasonably interpreted as the court delegating its power to the clerk to impose these fines, it is not an authorized act. The court has long held when a trial court orders defendant to " 'pay all fines, fees, and costs as authorized by statute,' it improperly delegated its power to impose a sentence to the circuit clerk." *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 89, 55 N.E.3d 117. The court is required to impose specific fines and absent such a showing, the circuit clerk is levying improper fines. *Smith*, 2014 IL App (4th) 121118, ¶ 63.

¶ 16 Our case is analogous to *People v. Isaacson*, 409 Ill. App. 3d 1079, 1085, 950 N.E.2d 1183, 1189 (2011), where the court looked to a McLean County conditional-discharge order, featuring the exact language as the probation order in this case, to determine if the trial

court properly assessed fines. The record contained no evidence indicating the trial court itself determined the mandatory fines applied to defendant's conviction or any of the specific fine amounts. *Id.* The discharge order improperly delegated the task to the circuit clerk and the court vacated the fines. *Id.*

¶ 17 Here, no evidence shows the trial court ordered the court systems fee or the state police operations assistance fee to be assessed. The two fines were not mentioned in the probation order or the supplemental sentencing order but rather were mentioned in a document not signed by the court or filed on the day of the hearing. We therefore vacate the two fines improperly imposed by the circuit clerk and decline to remand for the fines to be reimposed.

¶ 18

### III. CONCLUSION

¶ 19 We vacate the (1) \$50 court systems fee and (2) \$5 state police operations assistance fee. We otherwise affirm the conviction and sentence.

¶ 20 Affirmed in part and vacated in part.