

NOTICE  
Decision filed 11/29/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 140390-U

NO. 5-14-0390

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Fayette County.
	)	
v.	)	No. 06-CF-137
	)	
MICHAEL BOAZ,	)	Honorable
	)	Allen F. Bennett,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE BARBERIS delivered the judgment of the court. Justices Goldenhersh and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the record supports a finding that the payment status information sheet was part of the report of proceedings during the defendant’s criminal prosecution, the imposition of fines and fees were part of the final judgment, thus, properly imposed by the circuit court.

¶ 2 We are presented with a case where the circuit clerk imposed certain statutorily mandated fines, and the parties disagree on whether one of the four charges is a fine or fee and what relief this court may provide. For the following reasons, we affirm the judgment of the circuit court denying the defendant’s, Michael Boaz’s, two *pro se* motions requesting \$5 *per diem* credit against his sentence.

¶ 3

### I. Background

¶ 4 The defendant does not challenge his conviction or sentence of imprisonment on appeal. Rather, this appeal involves issues arising solely from monetary charges imposed by the circuit clerk. For this reason, we need not dwell long on the facts underlying the defendant's conviction.

¶ 5 On October 4, 2006, the defendant was charged by information with one count of criminal sexual assault (count I) (720 ILCS 5/11-1.20 (West 2004)), one count of aggravated criminal sexual abuse (count II) (*id.* § 11-1.60), and one count of unlawful failure to register as a sex offender (count III) (730 ILCS 150/6 (West 2004)). The information was later amended to charge the defendant with two counts of aggravated criminal sexual abuse (counts I and II) and one count of unlawful failure to register as a sex offender (count III). On August 10, 2007, in exchange for the dismissal of count III, the defendant pled guilty to counts I and II.

¶ 6 Prior to the defendant's sentencing hearing, a mandatory sex offender risk evaluation was completed. On December 20, 2007, the circuit court sentenced the defendant to concurrent terms of seven years' imprisonment to run consecutively to a prior, unrelated sentence he was serving at that time. The court issued the defendant credit for 146 days served in custody from October 15, 2006, through March 8, 2007. The court orally "assess[ed] court costs on each count, and \*\*\* den[ied] the State's position for reimbursement for \*\*\* public defender fees." The court did not state the specific amount imposed for court costs, and the mittimus does not reflect the imposition of fines or restitution by the court.

¶ 7 After the sentencing hearing, the circuit clerk calculated the statutorily authorized assessments against the defendant. According to the payment status information sheet, supplemented to the record “per 9-16-16 order,” the following fines and fees were charged to the defendant: “Clerk” (\$85), “State’s Atty” (\$30), “Court” (\$50), “Automation” (\$5), “Violent Crime” (\$20), “Judicial Security” (\$25), “Restitution” (\$900), “Document Storage” (\$3), “Medical Costs” (\$10), and “T&CCSF” (\$4).

¶ 8 On January 18, 2008, the defendant filed a motion to reconsider and a *pro se* motion for order *nunc pro tunc*. Soon thereafter, on January 23, 2008, the defendant filed a *pro se* petition to withdraw his guilty plea and vacate sentence, alleging coercion, threats to plead guilty, and ineffective assistance of counsel.

¶ 9 On February 5, 2008, the circuit court held a hearing on the defendant’s motion to reconsider sentence. At the hearing, the court stated that the “Restitution” charge was the cost associated with the defendant’s sex offender risk evaluation. It appears from the record that the court was reviewing the payment status information sheet at the time of the hearing, given that the transcript indicates a review of a “printout.” In particular, the transcript references a December 20, 2007, “printout” for \$222 owed by the defendant and a January 22, 2008, “printout” for \$1132, which counsel for defendant indicated a difference existed between the two printouts due to “a restitution figure for \$900 added in” and “a \$10 difference on the clerk fees.” The court stated the following:

“On the issue of the costs, that \$900 is the cost of the sex offender risk evaluation that was made and is taxed as a cost and has been added on. It shows up as restitution, because there’s no category in the computer system to show that, and that is why it is listed as restitution. But that cost was incurred, required by

statute, paid by Fayette County, and can rightfully be taxed as a cost to the defendant. So that is the difference.”

Based on the above, the court had before it the payment status information sheet during the February 5, 2008, hearing where counsel for defendant disputed the “Clerk” fee, which was a difference of \$10, and the \$900 “Restitution” charge.

¶ 10 In April 2008, new counsel for the defendant filed an amended motion to withdraw his guilty plea and vacate judgment, alleging that the defendant received ineffective assistance of counsel and was coerced to plead guilty to counts I and II. The court subsequently denied all of the defendant’s motions. In doing so, the court determined that the defendant was knowledgeable about the criminal justice system, that his plea was voluntary and not coerced, and that the defendant had been provided competent representation. The defendant appealed, and this court affirmed the circuit court’s judgment. See *People v. Boaz*, No. 5-09-0080 (2010) (unpublished order under Supreme Court Rule 23).

¶ 11 On May 14, 2014, the defendant filed a *pro se* motion for credit against sentence, and on June 10, 2014, a second *pro se* motion for credit against sentence requesting a \$5 *per diem* credit for pretrial detention served. The circuit court denied both motions. The defendant filed a timely notice of appeal.

¶ 12 II. Analysis

¶ 13 This appeal involves issues arising solely from monetary charges initially imposed by the circuit clerk. Specifically, the defendant argues that the four monetary charges are void fines that should be vacated because they were improperly assessed by the circuit

clerk. The fines for which the defendant seeks vacatur include: “Court” (\$50), “Violent Crime” (\$20), “Medical Costs” (\$10), and “Restitution” (\$900). In the alternative, the defendant argues that, should this court remand to the circuit court for the imposition of the above fines, he is entitled to credit for pretrial detention in the amount of \$2160.

¶ 14 The State asserts that the proper remedy is to remand to the circuit court for the imposition of fines because the circuit clerk imposed “Court,” “Violent Crime,” and “Medical Costs” fines without the authority to do so. The State also argues that the circuit clerk had authority to impose the “Restitution” charge after the sentencing because it was a “fee” or “cost.” The propriety of the imposition of fines and fees presents a question of law, which this court reviews *de novo*. *People v. Hible*, 2016 IL App (4th) 131096, ¶ 14; *People v. Daily*, 2016 IL App (4th) 150588, ¶ 27.

¶ 15 On June 1, 2018, the Illinois Supreme Court, in *People v. Vara*, 2018 IL 121823, ¶ 5, was tasked with a situation where a deputy circuit clerk imposed fees and mandatory fines on a payment status information sheet that was not included in the circuit court’s judgment. In reviewing the appellate court’s order, the Illinois Supreme Court determined that, because a final judgment includes the sentencing of a defendant, the imposition of a fine is a judicial function that can be performed only by a judge. *Id.* ¶ 14. The *Vara* court also ruled that it was improper for this court to allow defendant to supplement the record on appeal with the payment status information sheet, because the sheet “is not part of the common-law record or the report of proceedings of defendant’s criminal prosecution” and does not constitute a permissible supplemental record under the relevant Illinois

Supreme Court rules. *Id.* ¶ 22. Ultimately, the *Vara* court dismissed defendant’s appeal for lack of jurisdiction. *Id.* ¶ 30.

¶ 16 Similar to *Vara*, here, the defendant does not attack his conviction or prison sentence but monetary assessments levied against him. At the time of sentencing, the circuit court orally “assess[ed] court costs on each count, and \*\*\* den[ied] the State’s position for reimbursement for \*\*\* public defender fees.” The court did not state the specific amount imposed for court costs, and the mittimus does not reflect the imposition of fines or restitution by the court.

¶ 17 Distinguishable from *Vara*, however, here, the defendant filed a timely motion to reconsider sentence (see Ill. S. Ct. R. 604(d) (eff. July 1, 2006)). A review of the February 5, 2008, transcript indicates that counsel for defendant disputed the \$900 “Restitution” charge and a \$10 discrepancy for the assessed “Clerk” fee. In addressing the defendant’s motion to reconsider, the circuit court referenced specific monetary amounts, including \$1132 in total costs owed by the defendant, which was consistent with the payment status information sheet that was supplemented to the record on appeal on September 16, 2016. In particular, the court’s reference to \$1132 in total costs, included, among other assessments, “Court,” “Violent Crime,” and “Medical Costs.” As such, the assessments reflected in the payment status information sheet were part of the court’s modified sentencing order, entered on February 5, 2008, although supplemented to the record on September 16, 2016. Because the defendant failed to raise this issue in his first appeal (see *People v. Boaz*, No. 5-09-0080 (2010) (unpublished order under Supreme Court Rule 23)), he has waived this issue for review. See *People v. Towns*, 182

Ill. 2d 491, 503 (1998) (issues that could have been raised and considered on direct appeal, but were not, are considered waived).

¶ 18 Accordingly, the recording of all fines, including: “Court” (\$50), “Violent Crime” (\$20), “Medical Costs” (\$10), and “Restitution” (\$900), were properly before the circuit court and part of the court’s final judgment.

¶ 19 III. Conclusion

¶ 20 For the foregoing reasons, we hereby affirm the judgment of the circuit court of Fayette County.

¶ 21 Affirmed.