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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 15 CR 17990
)	
RONNIE MCATEE,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's appeal is dismissed for lack of jurisdiction.

¶ 2 Defendant Ronnie McAtee appeals from the order of the circuit court of Cook County entered in 2017 revoking his probation and sentencing him to six years in prison for retail theft (720 ILCS 5/16-25(a)(1) (West 2014)). Defendant had entered a guilty plea to the charge of retail theft in 2015 and was sentenced to two years of probation. In conjunction with the sentence of probation in 2015, the trial court also entered an order imposing various fines, fees, and other

costs. On appeal, defendant contends that several of those charges were incorrectly imposed and that some of the fees assessed are actually fines that can be offset by his presentence custody credit. Because we have no jurisdiction to now consider those claims, we dismiss this appeal.

¶ 3

BACKGROUND

¶ 4 On November 12, 2015, defendant pled guilty to felony retail theft. As a result of his plea, the trial court imposed a sentence of two years probation. The trial court found a sufficient factual basis for defendant's guilty plea. However, that factual basis was not read into the record. At sentencing, the court credited defendant for 388 days spent in presentence custody. The court also entered an order assessing \$434 in fines, fees, and other costs against defendant. The court admonished defendant that he had the right to seek leave to withdraw his guilty plea by filing a written motion within 30 days. The court also told defendant that any claim of error not raised in a timely motion was waived or "given up." The court also admonished defendant that, if the motion to withdraw his plea was denied, defendant could file an appeal with the Appellate Court within 30 days. Defendant stated that he understood these admonishments. Defendant did not seek to withdraw his guilty plea or file a notice of appeal.

¶ 5 In September 2016, the State filed a petition to revoke defendant's probation based on defendant's failure to report to his probation officer; failure to complete his required community service; as well as other alleged violations of the terms of his probation. Following a hearing on January 31, 2017, the trial court revoked defendant's probation. The court then sentenced defendant on the felony retail theft charge to an extended term of six years in prison based on his criminal history. In imposing the sentence, the trial court did not reimpose or refer to the fines, fees, or other charges previously imposed in conjunction with the 2015 plea. That same day,

defendant filed a notice of appeal, stating that he was appealing the finding of guilty on his violation of his probation as well as his six-year sentence.

¶ 6 On appeal, defendant does not challenge the trial court's January 31, 2017 finding that he violated his probation or its order revoking his probation and sentencing him to six years in prison. His sole contention on appeal challenges the computation of the various fines and fees which the trial court imposed during the November 12, 2015 proceeding when it accepted his guilty plea. He contends that the trial court incorrectly calculated the total amount owed in fines and fees. He also asserts that one charge was imposed in error, and several other charges labeled as "fees" are fines that can be offset by his presentence custody credit. Although the parties do not raise the issue of appellate jurisdiction, we have an independent duty to ensure our jurisdiction prior to considering the merits of an appeal. See *People v. Thompson*, 2015 IL 118151, ¶ 26.

¶ 7 The only fines, fees, and costs order in the record on appeal is the order entered with the guilty plea on November 12, 2015. Also, this is the order that defendant cites in his brief on appeal. The record shows that the court did not reimpose the fines and fees when it sentenced defendant for the violation of probation in 2017. Thus, defendant's contentions before this court involve the assessments imposed in conjunction with his guilty plea in November 2015.

¶ 8 However, defendant did not file a motion to withdraw his guilty plea and vacate the judgment or challenge the sentence within 30 days of the entry of the plea pursuant to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). Instead, he challenges the 2015 fines and fees assessments for the first time on appeal, only after being sentenced in 2017 for violation of probation. Since there is no mention in the 2017 trial court order of the fines, fees and costs that

the trial court imposed in its 2015 order, defendant's appeal necessarily relates to the 2015 order. Defendant did not file a notice of appeal from the 2015 plea judgment nor the imposition of fines, fees and costs pursuant to that judgment. Thus, his appeal of that order comes too late, therefore this court lacks jurisdiction. See *In re J.T.*, 221 Ill. 2d 338, 346 (2006).

¶ 9 Further, an appeal from a probation revocation is generally limited to issues that arise out of the probation revocation proceeding. *People v. Eisenberg*, 109 Ill. App. 3d 98, 100-01 (1982). Defendant's arguments on appeal do not arise from his 2017 probation revocation, but arise from his original 2015 guilty plea. See *People v. Combs*, 197 Ill. App. 3d 758, 761 (1990) ("a reviewing court cannot consider contentions regarding the original conviction in an appeal from a probation revocation").

¶ 10 Further, the court did not reimpose the 2015 assessments as part of the new sentence after revoking defendant's probation in 2017. See 730 ILCS 5/5-6-4(e) (West 2014) (upon finding a violation of probation, the trial court may continue the existing sentence, with or without modification, or impose a new sentence); see also, *e.g.*, *People v. Felton*, 385 Ill. App. 3d 802, 804-05 (2008) (where the trial court resentenced the defendant following a revocation of probation and "again imposed *** restitution," the "defendant [was] not challenging a condition of her prior probation but rather part of her new sentence imposed after the revocation of probation"); *People v. Bell*, 296 Ill. App. 3d 146, 154 (1998) (after the defendant's probation was revoked and the trial court again imposed a probationary term and monetary charges, the defendant could appeal the "new sentence of probation and new monetary assessments"). That is not the scenario in this case, as the 2017 sentencing order makes no mention of the fines, fees and costs which were imposed in 2015.

¶ 11 In conclusion, defendant challenges the fines, fees, and costs imposed in the judgment following his guilty plea in 2015. However, he is attempting to do so for the first time on appeal from a subsequent judgment, following resentencing for violation of his probation. Since defendant did not seek to withdraw his 2015 guilty plea within 30 days as required by Rule 604(d), he may not attempt to attack that judgment almost two years later. See *Combs*, 197 Ill. App. 3d at 760. Accordingly, this court lacks jurisdiction to resolve the issue raised by defendant.

¶ 12 Appeal dismissed.