

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).

2019 IL App (4th) 160002-UB

NO. 4-16-0002

FILED
April 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
LASHAUN L. PETERSON,)	No. 14CF958
Defendant-Appellant.)	
)	Honorable
)	James R. Coryell,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* (1) The statute under which defendant was convicted, section 11-401(b) of the Illinois Vehicle Code (625 ILCS 5/11-401(b) (West 2014)), does not violate the proportionate penalties clause of the Illinois constitution.

(2) This court lacks jurisdiction to review the fines and the State’s Attorney fee imposed by the circuit clerk.

(3) Defendant is not entitled to presentence-custody monetary credit toward imposed fines as no fines were imposed by the trial court as part of defendant’s sentence.

¶ 2 In November 2014, after a jury trial, defendant, Lashaun L. Peterson, was convicted of aggravated leaving the scene of an accident resulting in personal injury (625 ILCS 5/11-401(b) (West 2014)), a Class 2 felony. Because defendant had been earlier convicted of two other felonies, he was sentenced as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2014)) to

6 years' imprisonment. Defendant appealed his sentence, arguing (1) his sentence violated the proportionate penalties clause of the Illinois Constitution, (2) certain assessments imposed by the circuit clerk are fines that are void and should be vacated, (3) the circuit clerk exceeded statutory authority in imposing a \$40 State's Attorney fee, and (4) he is entitled to \$230 *per diem* credit against his fines.

¶ 3 In March 2018, this court affirmed defendant's sentence but vacated the fines imposed by the circuit clerk and remanded for a new sentencing order. Defendant filed a petition for leave to appeal to the Illinois Supreme Court. In September 2018, the supreme court denied defendant's petition but, in the exercise of its supervisory authority, directed this court to vacate our judgment and consider, in light of *People v. Vara*, 2018 IL 121823, whether this court has jurisdiction to address and vacate the clerk-imposed fines. *People v. Peterson*, No. 123550 (Ill. Sept. 26, 2018) (supervisory order). Accordingly, we vacate our original judgment in this case, filed March 30, 2018. We reconsider in light of *Vara* to determine whether a different result is warranted. We again affirm the trial court's judgment but do not address the clerk-imposed fines.

¶ 4 I. BACKGROUND

¶ 5 At defendant's jury trial, Lavalas Richardson testified he was riding his bike on July 6, 2014, when he was involved in an accident with defendant. Defendant was driving a pickup truck. According to Richardson, defendant stopped his truck and confronted Richardson, who was bleeding from his nose and chin. Defendant left the scene without providing his name, address, or phone number. Richardson sought medical treatment at a hospital. He was treated for facial fractures and a separated shoulder.

¶ 6 The jury found defendant guilty. Because defendant had two previous Class 1

felonies, he was subject to mandatory Class X sentencing. The trial court sentenced defendant to six years' imprisonment with three years' mandatory supervised release. At the sentencing hearing, the court did not address fines and fees and did not enter an order imposing fines or fees. The circuit clerk, however, imposed fines and fees totaling \$1382.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 A. Proportionate Penalties

¶ 10 Defendant contends the statute under which he was convicted, section 401(b) of the Illinois Vehicle Code (625 ILCS 5/11-401(b) (West 2014)), violates the Illinois constitutional guarantee of proportionate penalties. Defendant argues the legislature in section 11-401 defined his offense as a Class 2 felony, but it defined the same conduct in section 403 of the Illinois Vehicle Code (625 ILCS 5/11-403 (West 2014)) as a misdemeanor. According to defendant, because section 11-401 imposes a harsher penalty than section 11-403 for the same conduct, section 11-401 violates the proportionate penalties clause.

¶ 11 Our state constitution mandates criminal penalties be proportionate to the offenses. *People v. Christy*, 139 Ill. 2d 172, 177, 564 N.E.2d 770, 772 (1990). Section 11, the proportionate penalties clause (see *People v. Hauschild*, 226 Ill. 2d 63, 82-83, 871 N.E.2d 1, 12 (2007)), mandates “[a]ll penalties shall be determined *** according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. The clause provides a check on the individual sentencing judge and the legislature that initially determines statutory penalties. *People v. Clemons*, 2012 IL 107821, ¶ 29, 968 N.E.2d 1046.

¶ 12 A sentence is not proportionate to the offense when it is greater than a sentence for an offense with identical elements. See *Hauschild*, 226 Ill. 2d at 83. When a defendant challenges a sentencing scheme, Illinois courts employ the identical-elements test to determine whether the legislature satisfied the constitutional mandate of creating a penalty “according to the seriousness of the offense.” *Clemons*, 2012 IL 107821, ¶ 30, (quoting Ill. Const. 1970, art. I, § 11). When the legislature concludes the same elements warrant two distinct penalties, one of those penalties was not set according to the seriousness of the offense. *Id.* ¶ 30. Our review of this matter is *de novo*. *Hauschild*, 226 Ill. 2d at 83.

¶ 13 Both sections 11-401 and 11-403 of the Illinois Vehicle Code create mandates and penalties for individuals driving a vehicle involved in a motor vehicle accident resulting in personal injury. Section 11-401 provides the following, in part:

§ 11-401. Motor vehicle accidents involving death or personal injuries.

(a) The driver of any vehicle involved in a motor vehicle resulting in personal injury to or death of any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible and shall then forthwith return to, and in every event shall remain at the scene of the accident until the requirements of Section 11-403 have been fulfilled. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who has failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near the place where such accident occurred. No report made as required under this paragraph shall be used, directly or indirectly, as a basis for the prosecution of any violation of paragraph (a).

(b-1) Any person arrested for violating this Section is subject to chemical testing of his or her blood, breath, other bodily substance, or urine for the presence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, as provided in Section 11-501.1, if the testing occurs within 12 hours of the time of the occurrence of the accident that led to his or her arrest. The person's driving privileges are subject to statutory summary suspension under Section 11-501.1 if he or she fails

testing or statutory summary revocation under Section 11-501.1 if he or she refuses to undergo the testing.

For purposes of this Section, personal injury shall mean any injury requiring immediate professional treatment in a medical facility or doctor's office.

* * *

(d) Any person failing to comply with paragraph (b) is guilty of a Class 2 felony if the motor vehicle accident does not result in the death of any person.” (Emphasis added.) 625 ILCS 5/11-401 (West 2014).

¶ 14 In comparison, section 11-403 provides the following:

“§ 11-403. Duty to give information and render aid. The driver of any vehicle involved in a motor vehicle accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name, address, registration number and owner of the vehicle the driver is operating and shall upon request and if available exhibit such driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical

treatment, if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

If none of the persons entitled to information pursuant to this Section is in condition to receive and understand such information and no police officer is present, such driver after rendering reasonable assistance shall forthwith report such motor vehicle accident at the nearest office of a duly authorized police authority, disclosing the information required by this Section.

Any person failing to comply with this Section shall be guilty of a Class A misdemeanor.” 625 ILCS 5/11-403 (West 2014).

¶ 15 A plain reading of these sections establishes the elements are not identical. Section 11-401 defines “personal injury” for its purposes, while section 11-403 does not: “For purposes of this Section, personal injury shall mean any injury requiring immediate professional treatment in a medical facility or doctor’s office.” 625 ILCS 5/11-401 (West 2014). This sentence, not included by defendant when he quotes section 11-401 and not identified by the State, is key to the proportionate-penalties analysis. To be convicted and sentenced of a Class A misdemeanor under section 11-403, the personal injury involved need only be slight and not require professional medical treatment. To be convicted and sentenced of a Class 2 felony under section 11-401, however, the severity of the personal injury is such that treatment in a medical facility or doctor’s office is required. Because the elements of the offenses are not identical, the penalties for violating section 11-401 and section 11-403 are not unconstitutionally

disproportionate. Defendant's sentence is affirmed.

¶ 16 B. Fines

¶ 17 Defendant next contends this court should vacate the fines imposed by the circuit clerk, and the State agrees. After our original judgment, the Illinois Supreme Court issued its decision in *Vara*, 2018 IL 121823, ¶ 23, holding the appellate court lacked jurisdiction to review a circuit clerk's recording of fines not included in the sentencing court's final judgment. We thus lack jurisdiction to address defendant's challenge to the clerk-imposed fines.

¶ 18 C. State's Attorney Fee

¶ 19 Defendant further argues this court should correctly calculate the State's Attorney fee, lowering the \$40 assessment by the circuit clerk to \$30. The State concedes the clerk assessed a higher fee than permitted by statute.

¶ 20 We cannot accept defendant's argument or the State's concession upon concluding the rationale of *Vara* demonstrates we lack jurisdiction to review this claim. In *Vara*, the supreme court concluded the appellate court lacked jurisdiction to review the validity of the *fines* imposed by the circuit clerk. *Vara*, 2018 IL 121823, ¶ 30. In reaching this decision, the *Vara* court observed the "payment status information sheet," which listed the clerk-imposed fines, was a document created outside the record of the trial-court proceedings and was improperly added as a "supplement" to the record on appeal. *Id.* ¶¶ 5, 22. The court reasoned the rule permitting supplementation should not "be used as a device for inserting extraneous materials into the record on appeal." *Id.* ¶ 22.

¶ 21 While this case involves a *fee* (see generally *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 38, 39, 18 N.E.3d 912), it is like *Vara* in that defendant is using a "payment status

information sheet” printed months after final judgment was entered to establish error. Here, the payment status information sheet is dated after the record was filed on appeal and is included in the appendix attached to defendant’s opening appellate brief. It is not part of the record of the proceedings before the circuit court and not part of the court’s final judgment. See *Vara*, 2018 IL 121823, ¶ 22 (holding “[t]he payment status information sheet at issue here cannot be characterized as a ‘material omission’ or something that should have been included in the record of the proceedings before the circuit court”). Therefore, it is not a judgment of the trial court (see *id.* ¶ 31) over which we, a court of appeals, have jurisdiction to consider.

¶ 22 *D. Per Diem Credit*

¶ 23 Defendant contends he is entitled to \$230 *per diem* credit toward fines assessed against him. The State concedes the issue. We note, in our initial disposition, we did not address defendant’s argument he was entitled to \$5 per day credit against his fines. Instead, the issue was rendered moot by our pre-*Vara* decision to vacate the clerk-imposed fines.

¶ 24 We do not accept defendant’s argument or the State’s concession. According to section 110-14(a) of the Code of Criminal Procedure of 1963 (Criminal Code) (725 ILCS 5/110-14(a) (West 2014)), “[a]ny person incarcerated on aailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” In this case, the record establishes the trial court imposed no fines when sentencing defendant. Because the allowable credit may not exceed the amount of the fine and the court imposed no fine, defendant is not entitled to monetary credit.

¶ 25 We note defendant's request for *per diem* credit requests application of the credit toward the assessments imposed by the circuit clerk. Only the trial court is authorized to impose fines as part of a defendant's sentence. See *People v. Strickland*, 2017 IL App (4th) 150714, ¶ 49, 92 N.E.3d 512. Defendant is not entitled to monetary credit toward clerk-imposed fines rather than fines imposed by the court on his conviction.

¶ 26 III. CONCLUSION

¶ 27 We affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 28 Affirmed.