No. 121823

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- RICARDO VARA Defendant-Appellee	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-14-0848. There on appeal from the Circuit Court of the Fifteenth Judicial Circuit, Stephenson County, Illinois, No. 13 CF 73. Honorable Michael P. Bald, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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POINTS AND AUTHORITIES

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I.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court had jurisdiction over this appeal.

2. Whether the appellate court may impose mandatory fines that were not imposed by the circuit court, but were nonetheless assessed by the circuit clerk.

3. Whether this Court should use this case to amend its rules regarding the manner of challenging statutorily unauthorized sentences.

4. Whether the appellate court properly vacated the $200 sexual assault fine on the basis that it was improperly imposed by the circuit clerk.

STATEMENT OF FACTS

The Statement of Facts presented in the State's brief is generally sufficient to frame the issues on appeal. Any additional necessary facts are provided, together with appropriate record references, in the argument portion of this brief.

ARGUMENT

I.

The appellate court had jurisdiction to review the circuit clerk's unauthorized imposition of fines.

This Court reviews *de novo* the purely legal question of jurisdiction. *In re Det. of Hardin*, 238 Ill.2d 33, 39 (2010).

A. The notice of appeal complied with Supreme Court Rule 606 and adequately set out the judgment complained of.

The State argues that the appellate court did not have jurisdiction to consider Mr. Vara's argument that the unauthorized fines assessed by the circuit clerk are void. The State bases its argument on two distinct grounds. First, the State asserts that the clerk's unauthorized assessments are not final orders and therefore not part of the judgment from which Mr. Vara may appeal. Secondly, the State asserts that because the notice of appeal predates the Payment Status Information provided by the clerk's office, the appellate court lacked jurisdiction to consider the propriety of the clerk-imposed fines. (St. Br. 4-5, 7, 13) These are essentially the same arguments this Court rejected in *People v. Gutierrez*, 2012 IL 111590, ¶¶ 8-12.

The State's arguments here rely heavily on civil cases and conflate jurisdictional requirements in civil cases with justiciable issues on appeal in criminal cases. In addition to the civil cases, the State relies on one criminal case, *People v. Smith*, 228 Ill.2d 95 (2008). (St. Br. 13)

In *Smith*, this Court analyzed whether Smith's notice of appeal, which erroneously listed the date of his conviction, rather than the date his *pro se* motion was denied two years later, conferred jurisdiction upon the appellate

court. *Id*. Although Smith's appeal arose in the context of a criminal case, the *Smith* Court analyzed the Court's jurisdiction under Supreme Court Rule 303(b)(2). Rule 303(b)(2) provides that a notice of appeal from final judgments of the circuit court in *civil* cases "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. Sup. Ct. Rule 303(b)(2); *Smith*, 228 Ill.2d at 104. Although the appeal arose from a criminal case in which the defendant's *pro se* motion was treated like a post-conviction petition, the *Smith* decision did not address why the Court applied Rule 303(b)(2) instead of Rule 651, which applies to post-conviction petitions. Respectfully, this Court should take this opportunity to either further explain *Smith's* application of Rule 303(b)(2), or to consider whether *Smith* should be abrogated.

Regardless, in this case, Mr. Vara directly appeals from the final judgment in his *criminal* case, therefore the notice of appeal requirements are governed instead by Rule 606. Ill. Sup. Ct. Rule 606; *In re D.D.*, 212 Ill.2d 410, 416 (2004) (holding that Supreme Court Rule 606(a), rather than Rule 303, is applicable to criminal cases); *People v. Baskin*, 213 Ill.App.3d 477, 483 (1st Dist. 1991) (Rule 606 is the criminal appeals counterpart to Rule 303). Unlike Rule 303, under Rule 606, to perfect an appeal in a criminal case, an appellant must only file a signed notice of appeal with the circuit court clerk within 30 days after the entry of the final judgment from which he is appealing. Ill. Sup. Ct. Rule 606(a), (b).

In contrast to Rule 303, Rule 606 does not require that the appellant "specify the judgment or part thereof or other orders appealed from and the

relief sought from the reviewing court." Ill. Sup. Ct. Rule 303(b)(2). Although Rule 606(d)(7) notes the form of a notice of appeal should include: "If the appeal is not from a conviction, nature of order appealed from," that provision directly follows the caveat that the notice of appeal need only be "substantially" in that form. Ill. Sup. Ct. Rule 606(d). Thus, in a criminal case, the key jurisdictional inquiry is whether the defendant's notice of appeal, "considered as a whole and liberally construed, adequately identifies the complained-of judgment and informs the State of the nature of the appeal." *People v. Lewis*, 234 Ill.2d 32,39 (2009). This Court and the appellate court have found that where a defendant leaves the section "nature of order appealed from, other than conviction" blank, the notice properly brings up the defendant's entire conviction and sentence for review. *E.g., Gutierrez*, 2012 IL 111590, ¶12, 14; *Lewis*, 234 Ill.2d at 39; *People v. Decaluwe*, 405 Ill.App.3d 256, 264 (1st Dist. 2010).

Thus, the pleading requirements for a criminal notice of appeal are very different from a civil notice of appeal. The State's jurisdictional argument in this case stems from a fundamental misunderstanding of that difference. Throughout its brief, the State refers to the defendant having "appealed *from* the Payment Status Information" (emphasis added) and argues at length about whether the Payment Status Information is an appealable order. (St. Br. 4-12) The State's arguments imply that in order for the appellate court to have jurisdiction over any particular issue on appeal, there must be a written order. However, there are numerous issues properly raised in criminal appeals that may not have a corresponding written order –

the trial court's rulings on objections, ineffective assistance of counsel, prosecutorial misconduct, jury selection and instruction issues, or any claim of plain error, just to name a few.

Vara's notice of appeal lists his conviction and sentence. The judgment date listed is August 20, 2014, the date the court entered the final judgment in this case when it denied Vara's motion to reduce sentence. (C148; R630); Ill. Sup. Ct. Rule 606(b) (where a motion to reconsider sentence is timely filed within 30 days of the imposition of sentence, final judgment does not enter until the trial court enters an order disposing of the motion to reconsider sentence). The notice does not state that the appeal is from anything other than the conviction. (C148) Thus, the form of the notice of appeal substantially conforms to the one provided by Supreme Court Rule 606(d) and it informed the State that Mr. Vara was appealing his entire conviction and sentence. *Gutierrez*, 2012 IL 111590, ¶12; *Lewis*, 234 Ill.2d at 38. Moreover, it is well-settled that a fine is considered part of a defendant's sentence. *People v. Jones*, 223 Ill.2d 569, 581-82 (2006). Considered as a whole and liberally construed, Vara's notice of appeal encompasses any challenge to his conviction or sentence, including any fines, that are part of his sentence.

The State argues that because the date on the Payment Status Information sheet is two years after the judgment date listed on the notice of appeal and because, unlike in *Gutierrez,* it is unknown when the clerk assessed the fines and fees, the notice did not fairly and adequately set out the judgment complained of. (St. Br. 13-14) The specific date is unknown, at

least in part, *because* the clerk improperly and illegally assessed these fines without any order of the court to do so. *See, e.g., People v. Wisotzke*, 204 Ill.App.3d 44, 50 (2d Dist. 1990) (circuit clerk cannot assess even mandatory fines, as the imposition of fines is a judicial function beyond the authority of the circuit clerk). It would be unjust and unreasonable to conclude that the circuit clerk's imposition of illegal fines could be insulated from review by the simple expedient of the clerk assessing the unauthorized fines after the judgment date listed on the notice of appeal.

Moreover, any failure to strictly comply with the form of the notice of appeal is fatal only if the deficiency is substantive and the appellee is prejudiced. *Lewis*, 234 Ill.2d at 37. In its brief, the State has not identified any way in which it was prejudiced. Rather, the State has briefed the issue of the clerk's authority to impose the fines. Moreover, given the sheer volume of challenges to fines and fees that pass through our reviewing courts, any suggestion that the State was not prepared to rebut such a challenge would be wholly disingenuous. For all these reasons, the notice of appeal, considered as a whole and liberally construed, adequately informed the State of the nature of the appeal and conferred jurisdiction on the appellate court.

B. Because the appellate court had proper jurisdiction over the appeal, it had the authority to vacate the void fines assessed by the circuit clerk.

It is well-established that a void order may be attacked at any time or in any court, either directly or collaterally. *People v. Flowers*, 208 Ill.2d 291, 308 (2003). However, a court cannot confer relief, even from void judgments, if the court lacks jurisdiction. *Id.* Because the appellate court had jurisdiction

here by virtue of the properly filed notice of appeal, the appellate court had the authority to vacate the void fines. *People v. Gutierrez*, 2012 IL 111590, ¶ 14.

The State contends that *People v. Castleberry*, 2015 IL 116916, necessarily abrogated *Gutierrez*. (St. Br. 10-12) In *Castleberry*, this Court abolished the "void sentence rule" established in *People v. Arna*, 168 Ill.2d 107, 113 (1995), which held that any judgment failing to conform to a statutory requirement was void. *Castleberry*, 2015 IL 116916, ¶ 1. This Court clarified that a sentence is void only if it is entered by a court which lacks personal jurisdiction or subject matter jurisdiction. *Id.* ¶ 12.

Castleberry did not abrogate *Gutierrez*. Unlike a circuit court, which derives its authority to enter judgment from the Constitution, the circuit clerk has no authority to enter such orders. *People v. Hible*, 2016 IL App (4th) 131096, ¶ 11. In *Hible*, the court examined the historical distinction between judicial and nonjudicial officers of the court, noting that the circuit clerk, as a nonjudicial officer "possesses no power or jurisdiction to render a judgment" and that a judgment rendered by the clerk "is, therefore, unauthorized and void." *Id.*, quoting *Hall v. Marks*, 34 Ill. 358, 363 (1864). *Hible* further noted that prior cases on clerk-imposed fines refer to the clerk's lack of jurisdiction, rather than the void sentence rule abolished in *Castleberry*. *Id.* ¶ 12 (listing cases).

The fines at issue in this case were void from their inception, not because they failed to conform with statutory requirements, but because they were imposed by the circuit clerk, who had no authority to levy fines. *Hible*,

2016 IL App (4th) 131096, ¶¶ 9-11; *People v. Wade*, 2016 IL App (3d) 150417, ¶ 10; *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56. Accordingly, *Castleberry's* abolition of the void sentence rule has no bearing on the issue of whether fines imposed by the circuit clerk are void, and this Court should reject the State's argument to the contrary. For all these reasons, this Court should affirm the appellate court's judgment that it had jurisdiction.

II.

The fines assessed by the clerk were void from their inception. Therefore, the appellate court could not impose them in Vara's direct appeal as that would increase Vara's sentence, resulting in an impermissible cross-appeal by the State.

This issue presents a pure question of law about the propriety of the fines involved. Therefore, this Court's review is *de novo*. *People v. Marshall*, 242 Ill.2d 285, 292 (2011)

The State contends that where, as here, fines were imposed in a "procedurally flawed manner," the proper remedy is to vacate the fines and reimpose the fines either in the appellate court or in the circuit court on remand. (St. Br. 14-16)

Prior to this Court's decision in *People v. Castleberry*, 2015 IL 116916, Illinois courts routinely held that, when the clerk, rather than the court, imposed a statutorily mandated fine, the reviewing court was allowed to vacate the fine and reimpose it or remand the matter for the circuit court to impose it. *See, e.g.*, *People v. Higgins*, 2014 IL App (2d) 120888, ¶¶ 24, 33. After *Castleberry*, though, neither the appellate court nor the circuit court may increase the defendant's sentence – even if that sentence might be "illegally low" because it does not include a statutorily mandated penalty. *Castleberry*, 2015 IL 116916, ¶¶ 3-4, 6, 19-26, 31 (abolishing void-sentence rule and reversing appellate court, which had remanded matter for imposition of mandatory firearm enhancement). Consequently, in Vara's case, every fine the clerk imposed in excess of the $1,000 authorized by the court was correctly vacated outright.

The State cites three *post-Castleberry* cases in support of reimposition

by the appellate or trial court as the proper remedy - *People v. Ford*, 2016 IL App (3d) 430650*; People v. Hible*, 2016 IL App (4th) 131096; and *People v. Warren*, 2016 IL App (4th) 120721-B. None of these cases are persuasive.

In *Ford*, the defendant argued on appeal that the circuit clerk had improperly assessed certain mandatory fines against him. The State agreed. The appellate court held that the purported fines were void and it vacated them. *Ford*, 2016 IL App (3d) 130650, ¶¶ 32-33. The court also remanded the cause with directions for the trial court to impose the fines. *Id.* ¶¶ 32, 35. The court did not discuss whether *Castleberry* allowed this remedy. In fact, it did not mention *Castleberry* at all. Instead, the court relied on a pre-*Castleberry* appellate opinion that granted such relief. *Id.* ¶ 33.

In *Hible*, the defendant and the State agreed that "(1) fines were improperly imposed by the circuit clerk, and (2) defendant is entitled to presentence credit toward any new fines imposed on remand." *Hible*, 2016 IL App (4th) 131096, ¶ 7. Because the parties agreed to a remand, this opinion contains no analysis regarding whether remand is proper. The Fourth District simply remanded the case, as that was the remedy Mr. Hible requested.

A month after the Fourth District decided *Hible,* it decided *Warren*, and purported to address the application of *Castleberry* to fines imposed by the circuit clerk. The court agreed that the circuit clerk could not impose fines and that the fines the clerk assessed were void. The court next observed that *Castleberry* prevented it from "order[ing] the trial court to impose additional penalties on [the] defendant." *Warren*, 2016 IL App (4th) 120721-

B, ¶ 131, 144. It nonetheless ordered the trial court to "reimpose" the fines in the amounts that the clerk had assessed without authorization, (*Id.* ¶¶ 120, 123, 126, 131, 135, 139, 144), or, in accordance with the applicable statute, in a lesser amount (*Id.* ¶ 148). The *Warren* court saw itself constrained by *Castleberry* only to the extent that the applicable statutes might have called for fines in *greater* amounts – as though these were the only "additional penalties" precluded by *Castleberry*. *Id.* ¶¶ 131, 144.

Warren failed to recognize that because fines erroneously assessed by the clerk were void from the outset, the trial court's imposition of them, in any amount, *was* the imposition of additional penalties on the defendant. Although the appellate court vacated the legally nonexistent fines that the clerk had purported to impose, this simply formalized the existing state of affairs – the defendant was not subject to those fines. By ordering the trial court to impose those fines, and thus subject the defendant to them for the first time, *Warren* essentially created a State cross-appeal and awarded the State relief thereon. This is precisely what *Castleberry* said an appellate court may not do.

Recently, the Third District also remanded a cause for entry of a proper order imposing fines by the court, rather than the clerk. *People v. Wade*, 2016 IL App (3d) 150417, ¶ 12. Again, this was the remedy sought by the defendant, thus the majority did not engage in any analysis regarding the remedy. *Wade*, 2016 IL App (3d) 150417, ¶ 6. Justice Schmidt concurred with the majority that the fines were void, but dissented from the majority's decision to remand the matter for reimposition of the vacated fines. *Wade*,

2016 IL App (3d) 150417, ¶¶ 16-18 (Schmidt, J., dissenting).

Justice Schmidt reasoned that fines are part of a criminal sentence, so by failing to assess mandatory fines, the judge had imposed a sentence that was illegally low, regardless of what the clerk did. Thus, remanding the cause to reimpose vacated fines would, in effect, improperly grant relief to the State by increasing the defendant's sentence in violation of *Castleberry* and Supreme Court Rule 615(b). *Wade*, 2016 IL App (3d) 150417, ¶¶ 18-20 (Schmidt, J., dissenting). Thus, Justice Schmidt concluded that, "If the State believes it is worth the time and money to pursue these fines," it must seek a writ of *mandamus*. *Wade*, 2016 IL App (3d) 150417, ¶ ¶ 18, 20 (Schmidt, J., dissenting).

Justice Schmidt is correct. In a criminal case, fines are a "pecuniary *punishment*," *People v. Jones*, 223 Ill.2d 569, 581 (2006) (emphasis added), that is part of a criminal sentence. *People v. Graves*, 235 Ill.2d 244, 250 (2009). Illinois court have held for over 25 years that the judge—not the clerk—must impose fines as part of a defendant's sentence. *People v. Chester*, 2014 IL App (4th) 120564, ¶ 33 (aggregating cases). After *Castleberry*, neither the appellate court nor the circuit court may increase the defendant's punishment, even if it is "illegally low" because it does not include a mandatory penalty. *Castleberry*, 2015 IL 116916, ¶¶ 3-4, 6, 19-26, 31 (abolishing void-sentence rule and reversing appellate court's remand for imposition of mandatory firearm enhancement). Accordingly, this Court should reject the State's request to have the fines "reimposed" and instead, affirm the appellate court's order vacating the challenged assessments.

III.

The State has not made a compelling case for this Court to suspend its normal rulemaking procedures.

The State asks this Court to adopt a new rule in this appeal allowing a statutorily unauthorized sentence to be corrected at any time by motion in the circuit court. (St. Br. 20) The State lists several reasons why it would like such a rule created, but does not offer any compelling reasons this Court should suspend its rulemaking procedures set forth in Illinois Supreme Court Rule 3. Rule 3 provides that typically, a proposed rule is submitted to this Court's Rules Committee, then possibly a Judicial Conference committee or a Supreme Court committee, and when a proposed rule is recommended for adoption, it is submitted for public hearing. Ill. S. Ct. Rule 3(b), (d)(1), (3). These procedures exist to "provide an opportunity for comments and suggestions by the public, the bench, and the bar." Ill. S. Ct. Rule 3(a). While this Court retains the right to dispense with Rule 3's procedures, (Ill. S. Ct. Rule 3(a)(2)), it does so sparingly, in situations where the necessity and correctness of the proposed amendment is "clear and obvious." *See In re Michael D.*, 2015 IL 119178, ¶ 27; *In re B.C.P.*, 2013 IL 113908, ¶¶ 9, 15, 17.

The State argues its rule is necessary because various public funds rely on the collection of fines and fees to operate and the complicated nature of the assessment process makes it easy for fines to be missed. (St. Br. 18-19) However, an increasing body of research questions the propriety of funding the criminal justice system and specialty funds through fines and fees. Concerns include the increase in and implications of steep legal debt, and the disproportionate impact of the proliferation of fines and fees on low-income

populations and racial minorities. *See, e.g.,* Tamar R. Birckhead, *The New Peonage*, 72 Wash. & Lee L. Rev. 1595 (2015); Laura I. Appleman, *Nickel and Dimed Into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C. L. Rev. 1483 (2016); Neil L. Sobol, *Fighting Fines & Fees: Borrowing From Consumer Law to Combat Criminal Justice Debt Abuses*, 88 U. Colo. L. Rev. 841 (2017).

In fact, in 2016, this Court's Statutory Court Fee Task Force issued a report identifying four key findings:

> (1) The nature and purpose of assessments have changed over time, leading to a byzantine system that attempts to pass an increased share of the cost of court administration onto the parties to court proceedings;
>
> (2) Court fines and fees are constantly increasing and are outpacing inflation;
>
> (3) There is excessive variation across the state in the amount of assessments for the same type of proceedings;
>
> (4) The cumulative impact of the assessments imposed on parties to civil lawsuits and defendants in criminal and traffic proceedings imposes severe and disproportionate impacts on law- and moderate-income Illinois residents.

ILL. S. CT. STATUTORY COURT FEE TASK FORCE, ILLINOIS COURT ASSESSMENTS, 16 (June 1, 2016), *at* http://www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf. The report discussed each finding in-depth, and made recommendations, including legislative changes and amendments to Supreme Court Rules. *Id.* at 17-35, 39-85. Among the recommendations is streamlining criminal and traffic fines and fees into a uniform criminal assessment schedule, making the assessment process uniform, consistent, and less onerous for courts and clerks. *Id.* at 34. Such a change would,

arguably, address the State's concerns.

The State further argues that adoption of its proposed rule would promote judicial economy. (St. Br. 21-22) The State identifies several cases (including this one) in which the sole issue raised on appeal was the correction of fines or fees and argues this presents a "systemic drain on limited appellate resources" and is "the inefficient separate proceeding" this Court sought to avoid in *People v. Gutierrez*, 2012 IL 111590, ¶ 14 n.1. (St. Br. 21-23)

The State's argument seems to assume, again, that these cases are no more than appeals being filed directly from the clerk's processing of the fines, costs and fees, rather than from final judgments in a criminal case. Additionally, its argument fails to consider that the overwhelming majority of criminal appellants in this State are represented by appointed counsel, most often from the Office of the State Appellate Defender (hereafter "OSAD"). For instance, according to the 2015 Annual Report of the Illinois Courts, 3,311 criminal appeals were filed in our appellate courts in 2015. ADMIN. OFF. OF THE ILL. CTS., 2015 ANNUAL REPORT OF THE ILLINOIS COURTS, 24, *at* http://www.illinoiscourts.gov/SupremeCourt/AnnualReport/2015/2015_Admin_Summary.pdf. During fiscal year 2015, the Office of the State Appellate Defender was appointed to represent criminal defendants in 3,128 cases. OFC. OF THE ST. APP. DEFENDER, ANNUAL REPORT FISCAL YEAR - 2015, 28, *at* http://www.illinois.gov/osad/AboutUs/AnnualReports/AnnualReportFY2015.pdf. Because OSAD attorneys are appointed counsel, when a conscientious examination of the record on appeal and thorough

research reveal that any issue that could be raised on appeal would be wholly frivolous and without merit, counsel must file an *Anders* brief. *Anders v. California*, 386 U.S. 738 (1967); *People v. Jones,* 38 Ill.2d 384 (1967). The *Anders* brief requests permission to withdraw from the appeal and includes a supporting brief or memorandum of law setting forth a full statement of facts, a list of the potential issues on appeal – covering not only points the defendant raised in the trial court, but also "anything in the record that might arguably support the appeal," – and reasons why these issues do not merit relief. *Jones*, 38 Ill.2d at 391-92.

Logic and experience show that when the propriety of fines or fees is the only issue raised on appeal, appellate counsel has determined that there are no other meritorious issues to raise. Creating a rule that requires such issues to be raised only by separate motion in the circuit court does not promote judicial economy as the State claims. Rather, it will use *additional* judicial resources. OSAD will still be appointed to the appeals, and upon determining that the only issue of merit involves correcting the monetary assessments, appointed counsel will have to file an *Anders* brief, which will then be reviewed by the appellate court and *then* the defendant will have to file a separate, additional motion in the circuit court. And *then*, if the defendant disagrees with the result of the hearing in the circuit court he may file *another* notice of appeal. As this Court aptly observed in *Gutierrez*, "It is obviously much more efficient for the appellate court to simply take care of the matter while the case is on review than to have the defendant initiate a separate proceeding to have the fine vacated." *Gutierrez*, 2012 IL 111590, ¶

14 n. 1.

Moreover, the State has not offered any ideas on how its proposed rule would be carried out. Would a defendant have a right to be present or to have counsel appointed when his sentence is being altered in the circuit court post-appeal? If so, how would that be accomplished? How would an incarcerated defendant file such a motion? Would a filing fee apply to this motion – thus discouraging defendants from filing? And, as noted above, what happens when a party is unsatisfied with the result of the separate hearing – can such an order be appealed? By whom and in what manner? Would the indigent defendant again be entitled to the appointment of counsel on appeal?

This is not a situation where it is so clear and obvious that a rule change is necessary that this Court should bypass the normal rulemaking procedures. There are differences of opinion and competing considerations on this issue, such that the judicial system would be better served by this Court considering a rule change only after the stakeholders - the public, the State, the circuit clerks, and the bench and the bar - have had an opportunity to fully consider and comment on the consequences or desirability of a rule change.

For all these reasons, this Court should decline the State's invitation to use this case as a vehicle to adopt a rule change.

IV.

Regardless of the written order, the circuit court imposed only "a mandatory fine of $1,000" in its oral pronouncement of sentence. Because the oral pronouncement of the court controls, the appellate court correctly vacated fines assessed by the circuit clerk in excess of $1,000. (Response to State's Section V)

In its Statement of Facts, the State asserts that the circuit court "ordered a 'mandatory fine of $1,000,' (R614), a '$500 sex offender payment per statute, $200 sheriff's office fine, and . . . an additional $500 assessment.' (R615)" in this case. (St. Br. 2) A careful reading of the record, however, reveals that the court imposed only a $1,000 fine in this case. The sentencing hearing was combined with Mr. Vara's sentencing in another matter, 13 CF 28. After hearing evidence and argument, the court stated:

> After reviewing everything that we have in this case, the [c]ourt is going to find that probation here would deprecate the seriousness of the offenses. In regard to [the instant case] which is the offense of child pornography, the [c]ourt will sentence the defendant to a term of three years in the Department of Corrections. That is with one-year mandatory supervised release following that. There is a mandatory fine of $1,000 that is ordered assessed here. Also the requirements of following through with a lifetime of registration and provided with the other requirements of sex offenders such as providing the DNA sample.
>
> And concurrent with that is the sentence in [13 CF] 28, the grooming charge. And in that I will follow the cap that was recommended here, which is 24 months. It so happens it has the same number. 24 months Department of Corrections. Again, this runs concurrent with the [child pornography] case. 24 months DOC followed by one-year mandatory supervised release, $500 sex offender payment per statute, $200 sheriff's office fine, and I believe there's an additional $500 assessment as well. So I'm ordering those requirements in both of these along with the requirements of following through with registering for lifetime as indicated as is required by statute.

(R614-15)

The court imposed the sentence in each case separately, designating which case it was imposing sentence on by referring to the last two digits of the indictment number and the offenses in each. Thus, the fines imposed in the grooming case, 13 CF 28, were not imposed in this case.

The State argues that because the written judgment order in this case "imposed" the $200 sexual assault fine, the appellate court erred in vacating that fine. (St. Br. 24) But, it is well-settled that "[i]t is the oral pronouncement of the judge which is the judgment of the court. The written order of commitment is merely evidence of the judgment of the court. [Citation omitted.] When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement of the court controls." *People v. Smith*, 242 Ill.App.3d 399, 402 (4th Dist. 1993) (citing *People v. Williams*, 97 Ill.2d 252, 310 (1983)). Accordingly, the $1,000 fine ordered by the judge at the sentencing hearing controls, not the conflicting written order, and the appellate court correctly vacated the $200 fine imposed by the circuit clerk.

CONCLUSION

For the foregoing reasons, Ricardo Vara, defendant-appellee, respectfully requests that this Court affirm the judgment of the appellate court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Jaime L. Montgomery, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 20 pages.

/s/Jaime L. Montgomery
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No. 121823

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 2-14-0848.
Plaintiff-Appellant,	)	There on appeal from the Circuit Court of the Fifteenth Judicial
-vs-	)	Circuit, Stephenson County, Illinois, No. 13 CF 73.
RICARDO VARA	)	Honorable Michael P. Bald,
Defendant-Appellee	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 8, 2017, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Norma Huerta
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