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2019 IL App (3d) 170619-U

Order filed October 17, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Mercer County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-17-0619 and 3-17-0620
DOUGLAS W. SHULL,)	Circuit Nos. 16-CF-18 and 16-CF-41
Defendant-Appellant.)	Honorable Gregory G. Chickris, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court's order entered more than 30 days after final judgment was void and is vacated.
- ¶ 2 Defendant, Douglas W. Shull, appeals from a postplea order adding certain monetary assessments to his sentence. He argues that the Mercer County circuit court entered the order without jurisdiction and, alternatively, that the additional assessments deprived him of the benefit of his bargain. We vacate the order as void.

¶ 3

I. BACKGROUND

¶ 4

On November 9, 2016, defendant entered a fully negotiated plea of guilty to driving on a revoked license (625 ILCS 5/6-303(d-3) (West 2016)) and communicating with a juror (720 ILCS 5/32-4(a) (West 2016)). The two offenses were originally charged in separate cases, No. 16-CF-18 and No. 16-CF-41, respectively. In exchange for recommending an aggregate sentence of seven years' imprisonment, the State agreed to dismiss other pending charges. The circuit court accepted the plea and sentenced defendant accordingly, adding that defendant would be responsible for court costs in both cases and a \$4500 fine in case No. 16-CF-41. The written sentencing judgments, each filed on November 16, 2016, ordered defendant to pay "court costs only" in case No. 16-CF-18 and a "Fine of \$4500.00 plus costs" in case No. 16-CF-41.

¶ 5

On June 12, 2017, defendant filed a *pro se* "motion for return of bond on case resolved" in case No. 16-CF-18. In the motion, defendant disputed five fines totaling \$600: "Violent crime," "DV shelter service," "DV Battery," "Medical Costs," "Prob Ops Fee," and "Parole Sup Fund." Defendant argued that "Any review of your files will show clearly that I was not convicted of any violent crime. I also did not make use of any of the services listed above."

¶ 6

At a hearing held on August 14, 2017, the circuit court allowed defendant to argue his *pro se* motion. Defendant began by arguing that he was entitled to a \$5-per-day presentence incarceration credit. When the court observed that such an argument was irrelevant to his motion for return of bond, defendant next argued that "I wasn't convicted of a violent crime, so I'm not understanding why I'm being charged \$450." The State argued that it applied to any felony. The court responded: "I'm going to specifically order that all of those costs apply to your case and you are to pay for them and you can transfer the bonds to that. Now, that part of your motion is denied."

¶ 7 Defendant subsequently filed a notice of appeal captioned under both cases. The notice of appeal indicated that defendant was appealing only the order of August 14, 2017. In an addendum to the notice of appeal, defendant clarified that he was only challenging “the excess fines and fees not imposed by the Judge.”

¶ 8 II. ANALYSIS

¶ 9 Defendant argues on appeal that the circuit court’s August 14, 2017, order imposing additional fines was void because the court lacked jurisdiction. Alternatively, he argues that his new sentence—incorporating the additional costs added by the circuit clerk—deprived him of the benefit of the bargain set forth in his plea.

¶ 10 The circuit court generally loses jurisdiction over a case 30 days after the final judgment. *People v. Bailey*, 2014 IL 115459, ¶ 8. While the circuit court retains limited jurisdiction to enter a written order memorializing its oral pronouncement of sentence, it does not have the authority after 30 days to modify the sentence in any way. *People v. McCray*, 2016 IL App (3d) 140554, ¶¶ 24-25. An order entered by a court without jurisdiction is void. *People v. Castleberry*, 2015 IL 116916, ¶ 11. A void judgment may be attacked at any time, in any court. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004).

¶ 11 The circuit court in this case sentenced defendant on November 9, 2016. On August 14, 2017, the court ordered that additional fines would be added to defendant’s sentence.¹ The circuit court lost jurisdiction to modify defendant’s sentence 30 days after November 9, 2016. Its order of August 14, 2017, modified defendant’s sentence without jurisdiction and was therefore void.

¹The State points out that the circuit court, despite orally declaring that the new fines would be imposed, never filed a written order to that effect. The State thus insists there is no order to be challenged. We disagree. It is well-settled that it is the court’s oral pronouncement that controls and that, in the absence of a written order, is operative. *McCray*, 2016 IL App (3d) 140554, ¶ 24.

Castleberry, 2015 IL 116916, ¶ 11. The State on appeal agrees that the order in question “is void.”

¶ 12 Despite the State’s agreement that the order is void, it nevertheless devotes the bulk of its brief arguing that Illinois Supreme Court Rule 472 (eff. May 17, 2019) is retroactively applicable to this case. That rule, originally effective March 1, 2019, provides that the circuit court retains jurisdiction to correct errors relating to fines, fees, costs, and other monetary issues “at any time following judgment.” Ill. S. Ct. R. 472(a) (eff. May 17, 2019). It provides that such issues must be raised first in the circuit court, and that any issues not included in a Rule 472 motion are deemed forfeited on appeal. Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Accordingly, the State argues that defendant in this appeal is limited to challenging only those fines that were included in his motion for return of bond.²

¶ 13 The State also urges that “[e]ven if the trial court’s ‘order’ was void, it does not lead defendant where he wishes.” Citing our supreme court’s decision in *People v. Vara*, 2018 IL 121823, the State points out that this court does not have jurisdiction to consider the validity of fines “imposed” by the circuit clerk, and defendant therefore may not contest those assessments on this appeal.

¶ 14 It is apparent that the State misunderstands defendant’s argument. Defendant does not seek review of the circuit clerk’s actions. His contention that the newly imposed fines deprived him of the benefit of the bargain is only an alternative argument, to be considered only in the event that we do not find the circuit court’s order void. Defendant’s notice of appeal indicated that he was only challenging the order of August 14, 2017. Having found that order to be void, there is nothing more for this court to consider. *People v. Smith*, 228 Ill. 2d 95, 104 (2008) (“[A]

²The State does *not* argue that retroactive application of Rule 472 would grant the circuit court jurisdiction after the fact, thus resuscitating the void order of August 14, 2017.

