122549

IN THE

SUPREME COURT OF ILLINOIS

People State of Illinois,	)	
	)	
Appellee	)	
	)	Petition for Leave to Appeal from
v.	)	Appellate Court
	)	First District
Joseph Griffin,	)	1-14-3800
	)	12CR13428
Appellant	)	13CR12564
	)	
	)	
	)	
	)	
	)	
	)	

ORDER

On the Court's own motion, the appeal is dismissed. In the exercise of this Court's supervisory authority, the Appellate Court, First District, is directed to vacate its judgment in People v. Griffin, case No. 1-14-3800 (06/27/17). The appellate court is directed to remand the case to the circuit court where the defendant may raise his contentions of errors in sentencing as set forth in Supreme Court Rule 472.

Burke, J., joined by Kilbride and Neville, JJ., dissenting from the dismissal of the appeal with a supervisory order.

Dissent attached.

Order entered by the Court.

FILED
April 18, 2019
SUPREME COURT
CLERK

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 122549)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v.
JOSEPH GRIFFIN, Appellant.

Filed April 18, 2019.

JUSTICE BURKE, dissenting from dismissal of the appeal with a supervisory order:

OPINION

¶ 1 Approximately five months after pleading guilty to burglary in the circuit court of Cook County, the defendant, Joseph Griffin, filed a *pro se* motion seeking additional presentence custody credit. The circuit court denied the motion, and defendant appealed.

¶ 2 On appeal, with the assistance of counsel, defendant abandoned his claim for additional presentence custody credit. Instead, defendant argued for the first time that the circuit court erroneously assessed certain fees and that he was entitled to a monetary *per diem* credit against fines under section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2014)). The appellate court dismissed defendant's appeal, holding it lacked jurisdiction to consider defendant's

fee and fine claims. 2017 IL App (1st) 143800. Defendant filed a petition for leave to appeal, which we allowed. Ill. S. Ct. R. 315 (eff. July 1, 2017).

¶ 3 The parties have completed briefing. Defendant, as appellant, maintains the appellate court erred when it held it lacked jurisdiction. Defendant asks this court to grant him relief by reversing the judgment of the appellate court and ordering the appellate court to address his fee and fine claims. The State, as appellee, contends the appellate court correctly held that it lacked jurisdiction and, therefore, the judgment of the appellate court should be affirmed. Oral argument was held on September 12, 2018, and the matter stands ready for a decision on the merits of the jurisdictional issue presented in defendant's appeal.

¶ 4 The majority, however, declines to address the merits. Instead, on its own motion and without notice to the parties, the majority summarily dismisses defendant's appeal.

¶ 5 The majority gives no reason why defendant's appeal must be dismissed, and I am unable to discern one. There is nothing in the record, the parties' briefs, or anywhere else that suggests a dismissal order is required. To the contrary, defendant's appeal remains properly before us, and the parties continue to await this court's decision on the merits. The majority does note that, following dismissal, defendant may continue to pursue his fee and fine claims by commencing a new action in the circuit court under our recently adopted Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019). But the existence of an alternative means of seeking relief does not explain why defendant should be denied relief in this case or why this court cannot address the merits of his appeal. Indeed, fairness to defendant requires that, before making him go through the time and effort of initiating an entirely new proceeding, this court first determine whether he can receive relief in the appeal that is already before us and ready for decision. Nor can the dismissal of defendant's appeal be rationalized as a matter of judicial economy for this court—the appeal has already been fully briefed and argued, and nothing is left to do but render a decision. There is, in short, no justification for dismissing defendant's appeal in this court. The merits of the case should be addressed.

¶ 6 In addition to dismissing defendant's appeal, the majority also vacates the judgment of the appellate court. No explanation is given for this action other than to

state that it is done "in the exercise of this Court's supervisory authority." Again, I disagree.

¶ 7 Article VI, section 16, of the Illinois Constitution of 1970 vests this court with supervisory authority over the lower courts of this state. Ill. Const. 1970, art. VI, § 16. This authority is "unlimited in extent and hampered by no specific rules." *Gonzalez v. Union Health Service, Inc.*, 2018 IL 123025, ¶ 16. Of course, unlimited and unconstrained power risks abuse. For this reason, our case law has repeatedly cautioned that supervisory authority is to be "invoked with restraint." *Id.* ¶ 17. Supervisory orders are "disfavored" and to be used only if "the normal appellate process will not afford adequate relief." *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d 510, 513 (2001).

¶ 8 There are good reasons why a supervisory order may not be used as a substitute for the normal appellate process, particularly when the purpose of the supervisory order is to summarily vacate or reverse the judgment of a lower court. Chief among them is that, unlike a supervisory order, the normal appellate process requires this court to provide a written explanation for its decision. Vacating or reversing the judgment of a lower court is not something that can be done purely at the discretion of this court; it requires a reasoned, legal basis in the law. The written opinion provides assurance to the public that the legal basis exists and that the vacatur or reversal is not simply the result of whim or caprice. It also provides assurance to the losing party that his or her arguments have been heard and fairly considered. A summary supervisory order, on the other hand, provides no such assurances. A supervisory order that permanently vacates or reverses the judgment of a lower court, and that is unaccompanied by any explanation, appears to be nothing more than the arbitrary exercise of judicial power. It is vacatur or reversal by judicial fiat.

¶ 9 In this case, the majority has improperly used the supervisory authority as a substitute for the normal appellate process. The majority has permanently vacated an appellate court judgment via a summary supervisory order and, in so doing, has avoided its obligation to explain why that action is legally justified—an explanation that would have to be provided if the majority were to review the appellate court's judgment through the normal appellate process. Merely invoking the words "supervisory authority" is not a legal explanation or legal justification for vacating the judgment of the appellate court. The majority's failure to provide a

reasoned, legal basis for its action is a clear abuse of this court's supervisory authority.

¶ 10 Moreover, the majority's vacatur of the appellate court's judgment is confusing. If the majority has taken the step of vacating the appellate court's judgment because it believes the appellate court's decision is incorrect, then this means appellate jurisdiction does exist to address defendant's fee and fine claims. But if appellate jurisdiction does exist, why is the majority dismissing defendant's appeal and denying him relief?

¶ 11 Finally, I cannot join in the majority's vacatur of the appellate court's judgment for the simple reason that it is not the legally correct thing to do. The judgment of the appellate court should be affirmed, not vacated. However, for the following reasons, I would affirm on grounds different than those set forth in the appellate court's decision.

¶ 12 BACKGROUND

¶ 13 On May 19, 2012, defendant was arrested on various charges of unlawful use of a weapon and placed into custody. While in custody, forensic testing linked defendant to a separate, unrelated burglary. Defendant was arrested for this second offense on June 6, 2013.

¶ 14 On April 1, 2014, defendant pleaded guilty to the charge of unlawful use of a weapon by a felon (UUW). He received a sentence of 5 years' imprisonment and was awarded 682 days of presentence custody credit for the time spent in custody from May 19, 2012, to April 1, 2014. A written sentencing order, dated April 1, 2014, reflects the circuit court's sentencing judgment and states that the "Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0682 days as of the date of this order." In a separate written order, also dated April 1, 2014, the circuit court assessed various fines, fees, and costs.

¶ 15 On April 17, 2014, defendant pleaded guilty to the burglary charge before a different judge. For this offense, defendant received a sentence of six years' imprisonment to be served concurrently with the sentence imposed for the UUW

offense. He was also awarded 316 days of presentence custody credit for the time spent in custody on the burglary offense from June 6, 2013, to April 17, 2014. A written sentencing order, dated April 17, 2014, reflects the court's sentencing judgment and states that the "Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0316 days as of the date of this order." In a separate written order, also dated April 17, 2014, the circuit court assessed various fines, fees, and costs.

¶ 16 Defendant did not file a motion to withdraw either of his guilty pleas or reconsider his sentences or otherwise attempt to appeal from those judgments. Instead, approximately five months later, in September 2014, defendant filed a *pro se* pleading titled "Motion For Order *Nunc Pro Tunc* (Correcting Mittimus)." In this motion, defendant asserted that he was being denied proper presentence custody credit on his burglary offense. Specifically, defendant asserted that the initial custody date for his burglary case (June 6, 2013) should have been the same as the initial custody date for his UUW case (May 19, 2012) and, therefore, he was improperly being denied 382 days of presentence custody credit in the burglary case. Defendant asked the circuit court to enter an order to either "correct the mittimus reflecting his true custody date" or provide defendant with a credit of "approximate[ly] 382 days." Although defendant's motion only sought additional presentence custody credit in his burglary case, it was captioned with the case numbers for both the burglary case and the UUW case and was referred to both sentencing judges.

¶ 17 On September 25, 2014, a brief hearing was held on defendant's motion before the judge who heard the UUW case. After confirming the accuracy of the presentence credit given in the UUW case with the State and the public defender, the judge stated that "Defense motion for corrected mit [*sic*] is being denied." On October 8, 2014, a similarly brief hearing was held on defendant's motion before the judge who heard his burglary case. As in the UUW case, the judge concluded that defendant had received all of the credit he was due and stated that "Defendant's motion for corrected mitt [*sic*] is denied." Thereafter, the clerk of the circuit court mailed defendant a letter notifying him that the circuit court had denied his motion in both cases. The clerk's letter further notified defendant that "[p]er the Public Defender and the Assistant State's Attorney" the circuit court's calculation of defendant's presentence custody credit was "accurate."

¶ 18 On November 6, 2014, defendant mailed a *pro se* notice of appeal for both of his cases. The court later appointed counsel from the Office of the State Appellate Defender to represent defendant on appeal.

¶ 19 On appeal, with the assistance of counsel, defendant abandoned his original claim seeking additional presentence custody credit for the burglary offense. Instead, for the first time, defendant asserted that certain fees were erroneously assessed and that he was entitled to a monetary *per diem* credit against fines under section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2014)).

¶ 20 Although the parties agreed that the appellate court had jurisdiction to review defendant's fee and fine claims, the appellate court ordered supplemental briefing on that issue. The court explained:

> "This case is but one of hundreds of criminal appeals involving fines-and-fees issues that were overlooked at the trial court level and raised for the first time on appeal. ***
>
> We are aware of no other context in which an appellant may raise entirely new issues on appeal, unrelated to the order or judgment from which appeal is taken, and still obtain review on the merits. Yet this is routine in criminal appeals where fines-and-fees issues are raised for the first time in this court. In fact, it has become so routine that the parties in this case did not even address the question of our jurisdiction until we requested supplemental briefing on the matter.
>
> The time has come to take a more serious look at this problem, both for the sake of preserving proper appellate jurisprudence and for the sake of judicial economy." 2017 IL App (1st) 143800, ¶¶ 5-7.

After reviewing applicable authority, the appellate court declined to review the merits of the claims defendant raised for the first time on appeal and dismissed his appeal for want of jurisdiction. In so holding, the court noted that there were three questions before it: (1) Did the circuit court have jurisdiction to reach the merits of defendant's *pro se* motion even though it was filed more than 30 days after sentencing? (2) If so, was defendant's appeal from the denial of that motion

properly before the appellate court? (3) If so, could defendant "piggyback" his fee and fine claims into the appeal, even though they were not raised in the circuit court? *Id.* ¶ 10.

¶ 21 The appellate court answered the first question "yes" but the second question "no." The court determined that defendant's failure to comply with Illinois Supreme Rule 604(d) (eff. Mar. 8, 2016) required dismissal of the appeal. *Id.* ¶ 11. The court further determined that the trial court's ruling on defendant's *pro se* motion was not a final and appealable order. *Id.* ¶ 13. Last, the court rejected defendant's alternative arguments for reaching the merits of his newly raised claims. *Id.* ¶¶ 22, 25. Having answered the second question "no," the appellate court did not reach the third question. This appeal followed.

¶ 22 ANALYSIS

¶ 23 As the appellate court observed, the threshold issue in this case is whether the circuit court had jurisdiction to rule on the merits of defendant's *pro se* motion even though it was filed more than thirty days after sentencing. In holding that the circuit court did, the appellate court cited the common-law rule that the circuit court retains jurisdiction to correct clerical errors any time after judgment, so as to make the written record conform to the actual judgment rendered by the court. *Id.* ¶ 12 (citing *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991), *overruled on other grounds by Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 30-33, (2002)). The appellate court then concluded that defendant, in his *pro se* motion, merely asserted clerical errors by the judge who heard his burglary case—the use of the wrong custody date and miscalculation of presentence custody credit—so the circuit court had jurisdiction to consider his motion even though it was filed beyond 30 days. I disagree. The appellate court stated the rule correctly but misapplied it under the facts of this case.

¶ 24 The rule cited by the appellate court is based on the principle that, "[i]n a criminal proceeding, the pronouncement of the sentence is the judicial act which comprises the judgment of the court. The entry of the sentencing order is a ministerial act and is merely evidence of the sentence." *People v. Williams*, 97 Ill. 2d 252, 310 (1983) (citing *People v. Allen*, 71 Ill. 2d 378, 381 (1978)). Thus, when the oral pronouncement of the circuit court and its written sentencing order are in conflict, the oral pronouncement controls. See, *e.g.*, *People v. Carlisle*, 2015 IL

App (1st) 131144, ¶ 87 (and cases cited therein). For this reason, a request to make the written sentencing order conform to the oral pronouncement is not a challenge to the sentencing judgment. It is, in fact, a request to enforce the actual sentencing judgment and, therefore, may be brought at any time. See Ill. S. Ct. R. 472(a)(4) (eff. Mar. 1, 2019).

¶ 25 In this case, however, defendant's motion did not assert there was any conflict between the circuit court's oral pronouncement of presentence custody credit in the burglary case and the credit reflected in the court's written sentencing order. The rule cited by the appellate court is therefore inapplicable and did not provide a basis for the circuit court to obtain jurisdiction over defendant's motion.

¶ 26 Because defendant's *pro se* motion stated that he was seeking to "correct the mittimus," the parties also discuss the common-law rule that holds that a corrected mittimus may be issued at any time (*People v. Anderson*, 407 Ill. 503, 505 (1950)) as a possible basis for the circuit court's jurisdiction. But this rule, too, is inapplicable under the facts of this case.

¶ 27 A mittimus is a " 'court order or warrant directing a jailer to detain a person until ordered otherwise.' " *People v. Morrison*, 2016 IL App (4th) 140712, ¶ 33 (Harrison, J., specially concurring) (quoting Black's Law Dictionary (10th ed. 2014)). Prior to the advent of photocopying, it was necessary for the circuit court, as part of the sentencing process, to issue a mittimus that was separate and distinct from the court's written sentencing order. The signed sentencing order had to remain with the clerk of the circuit court, yet the officials of the penal institution to which the defendant was being committed needed to be informed of the defendant's sentencing information. The only way to do this was through a separate document. Of course, mistakes could easily be made when the circuit court's sentencing judgment was transcribed onto a separate mittimus. However, the common law permitted the separate mittimus to be corrected at any time, since doing so only conformed a document that was not part of the record to the circuit court's actual sentencing judgment. See *People v. Young*, 2018 IL 122598, ¶ 29 (mittimus may only be corrected when it is inconsistent with the judgment rendered by the circuit court); *People v. Scheurich*, 2019 IL App (4th) 160441, ¶¶ 23-27; *People v. Coleman*, 2017 IL App (4th) 160770, ¶¶ 18-20; *Morrison*, 2016 IL App (4th) 140712, ¶¶ 32-38.

¶ 28 Once photocopying became widely available, there was no longer a need for a separate document to convey sentencing information—the court's written sentencing order could simply be photocopied. In 1985, the legislature recognized this reality by adding section 2-1801 to the Code of Civil Procedure. See Pub. Act 84-622, § 1 (eff. Sept. 20, 1985) (adding Ill. Rev. Stat. 1985, ch. 110, ¶ 2-1801). This provision states that a copy of the circuit court's sentencing judgment or order shall serve as the mittimus. 735 ILCS 5/2-1801(a) (West 2014); *Young*, 2018 IL 122598, ¶ 30; *Scheurich*, 2019 IL App (4th) 160441, ¶ 24; *Morrison*, 2016 IL App (4th) 140712, ¶¶ 34-35; see also Pub. Act 84-551, § 27 (eff. Sept. 18, 1985) (amending section 5-8-5 of the Unified Code of Corrections to provide that the circuit court shall commit an offender via an "order for commitment" rather than a mittimus (Ill. Rev. Stat. 1985, ch. 38, ¶ 1005-8-5, now codified at 730 ILCS 5/5-8-5 (West 2016))).

¶ 29 Today, a separate mittimus is "something of an anachronism." *Morrison*, 2016 IL App (4th) 140712, ¶ 33. Circuit courts rely on the written sentencing order "to not only document the terms of the defendant's sentence but also to convey the terms of the sentence to the penal institution that is receiving the defendant for incarceration." *Scheurich*, 2019 IL App (4th) 160441, ¶ 24. Importantly, however, although the legislature has authorized the circuit court to use the written sentencing order as the mittimus, the legislature has not altered the common-law rule regarding mittimus correction. That rule remains limited to situations where the circuit court has prepared a separate and distinct mittimus. *Coleman*, 2017 IL App (4th) 160770, ¶ 19; *Scheurich*, 2019 IL App (4th) 160441, ¶ 25.

¶ 30 In this case, there is no separate mittimus. The only documents of record in defendant's burglary case are the circuit court's written sentencing order setting forth defendant's term of imprisonment and presentence custody credit (which is captioned as both a sentencing order and an "order of commitment") and a fines, fees, and costs order. The rule which holds that a separate mittimus may be corrected at any time is therefore inapplicable in this case and did not provide a basis for the circuit court to obtain jurisdiction over defendant's motion.

¶ 31 Defendant's *pro se* motion is, at times, inconsistent, stating both that the custody date for his burglary case is accurately set forth in the circuit court's sentencing order but that the records of the Department of Corrections, which used

the identical custody date, are inaccurate. However, there is one unequivocal thing in defendant's motion: a request for additional presentence custody credit in the burglary case. The determination of presentence custody credit is the responsibility of the circuit court. *People v. Williams*, 239 Ill. 2d 503, 508 (2011) (citing 730 ILCS 5/5-4-1(e)(4) (West 2008)). The circuit court exercised that responsibility in defendant's burglary case by making a judicial determination, both orally and as reflected in the written sentencing order, that defendant was entitled to 316 days of presentence custody credit. The relief defendant sought in his *pro se* motion was not correction of a clerical error or correction of a separate mittimus. Rather, it was amendment of the sentencing judgment itself. *Young*, 2018 IL 122598, ¶ 30; *Scheurich*, 2019 IL App (4th) 160441, ¶ 25.

¶ 32 Under then-existing law, the circuit court did not have jurisdiction to consider defendant's untimely request to amend the sentencing judgment. See *People v. Flowers*, 208 Ill. 2d 291, 303 (2003) ("Normally, the authority of a trial court to alter a sentence terminates after 30 days."). For this reason, the circuit court erred in considering defendant's motion on the merits. Because the circuit court had no jurisdiction to entertain the motion, the appellate court should have both vacated the circuit court's judgment and dismissed defendant's appeal. *Id.* at 307. Here, the appellate court correctly dismissed defendant's appeal but did not vacate the judgment of the circuit court. Accordingly, I would affirm the appellate court's judgment that it lacked jurisdiction to consider defendant's appeal and also vacate the judgment of the circuit court.

¶ 33 As this case illustrates, the circuit court's authority to address such things as presentence custody credit and fines and fees more than 30 days after judgment, and the scope of the rules that permit correction of clerical errors and mittimuses at any time, continue to be the sources of some confusion. This confusion has become a matter of greater concern since the abolition of the void sentence rule (see *People v. Castleberry*, 2015 IL 116916), which had previously provided a mechanism to address some of these issues. 2017 IL App (1st) 143800, ¶ 8.

¶ 34 To alleviate these problems, this court recently adopted rules that create a comprehensive framework for addressing certain sentencing claims initially in the circuit court. See Ill. S. Ct. Rs. 452, 472, 557, 558 (eff. Mar. 1, 2019). In particular, Rule 472 establishes an explicit jurisdictional basis for the circuit court to correct at

any time following judgment alleged errors in the (1) imposition or calculation of fines, fees, assessments, or costs; (2) application of *per diem* credit against fines; (3) calculation of presentencing custody credit; or (4) clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court. Ill. S. Ct. R. 472(a) (eff. Mar. 1, 2019). The appellate court's judgment in this case must be affirmed because, at the time defendant filed his *pro se* motion in the circuit court, Rule 472 had not yet been adopted and no law permitted the circuit court to consider his motion on the merits. However, going forward, nothing prohibits defendant from seeking relief in the circuit court pursuant to Rule 472.

¶ 35 For the foregoing reasons, I would affirm the judgment of the appellate court and vacate the judgment of the circuit court. I therefore dissent from the majority's order.

¶ 36 JUSTICES KILBRIDE and NEVILLE join in this dissent.