

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (4th) 200500-U

NO. 4-20-0500

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 9, 2023

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JUSTIN SELLARS,

Defendant-Appellant.

) Appeal from the

) Circuit Court of

) Livingston County

) No. 19CF114

)

) Honorable

) Jennifer H. Bauknecht,

) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.

Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not commit error by directing the clerk of the court to apply defendant's bond to the assessments the court imposed at sentencing before determining defendant qualified for a waiver of assessments.

¶ 2 At defendant Justin Sellar's sentencing hearing, the trial court indicated 100% of any assessment that remained after applying the bond posted was waived. After the clerk of the court applied defendant's bond as the court directed, defendant filed a motion asserting this use of his bond was prohibited by statute (725 ILCS 5/124A-20(b)(1) (West Supp. 2019)). The court denied defendant's motion. In this appeal, defendant asserts the court was without statutory authority to apply his bond to the assessments because the court granted defendant a waiver of 100% of the assessments due to defendant's indigency. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On April 29, 2019, the State charged defendant in the circuit court of Livingston County with five offenses: (1) delivery of a controlled substance (720 ILCS 570/401(d) (West 2018)); (2) two instances of unlawful delivery of a controlled substance (*id.* § 401(f)); (3) possession with intent to deliver a controlled substance (*id.* § 401(f)); and (4) unlawful possession of a hypodermic syringe (720 ILCS 635/1 (West 2018)). Michelle Sellars, defendant’s mother, posted \$2500 bond to secure his release and acknowledged the bond could be used, upon defendant’s conviction, to pay “fines, costs, fees, and restitution.” Defendant sought the appointment of counsel and filed an affidavit in support of that application. On review of his request, the trial court appointed counsel for him.

¶ 5 In October 2019, defendant pleaded guilty to the five charges, and, in December 2019, the trial court sentenced him to four years’ incarceration. In addition, the court levied \$3225 in assessments. At the sentencing hearing, presumably due to defendant’s indigency, the court stated:

“And the other thing I was going to indicate is to the extent there are any fines, costs or assessments that remain due and owing after the bond is applied and the incarceration credit, in regards to the criminal assessment, which is the \$2,215, I will waive 100 percent of that based upon the sentence.”

¶ 6 Additionally, the trial court’s financial sentencing order provided for a waiver of “100%” of the “Criminal Court Assessment,” and directed the circuit clerk to “apply all available bond prior to pretrial incarceration credits and assessment waivers.” The clerk applied the \$2500 bond and noted the remaining balance was waived.

¶ 7 Defendant filed a motion arguing section 124A-20(b)(1) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/124A-20(b)(1) (West Supp. 2019)) prohibited the clerk of

the court from applying the bond to any assessments given the trial court had determined to exempt defendant from the payment of assessments. The trial court denied the motion.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant asserts the trial court lacked statutory authority to permit the payment of his assessments, from the bond posted on his behalf, because doing so contravenes the plain language of, and legislative intent underlying, section 124A-20(b)(1) of the Code (*id.*) which provides for a waiver of assessments due to indigency.

¶ 11 A. Standard of Review

¶ 12 We review questions of statutory interpretation *de novo*. *People v. O'Brien*, 197 Ill. 2d 88, 91 (2001). The primary goal is to “ascertain and give effect to the legislature’s intent.” *Id.* at 90. Our first step is to examine the “plain and ordinary meaning” of the statutory language. *Id.* If that language is “clear and unambiguous,” we apply the language as written and without reference to “further aids of statutory construction.” *Id.* at 90-91. We construe “words and phrases” not in isolation, but considering other relevant provisions. *Id.* at 91.

¶ 13 B. The Plain Language

¶ 14 Section 124A-20(b)(1) of the Code provides in pertinent part:

“If the court finds that the applicant is an indigent person, the court shall grant the applicant a full assessment waiver exempting him or her from the payment of any assessments.” 725 ILCS 5/124A-20(b)(1) (West Supp. 2019).

¶ 15 The plain language of this section specifies that “the applicant” can be exempted from the payment of assessments, and the exemption applies to “him or her.” The language does not speak to the exemption of anyone other than “the applicant.” Defendant argues the statutory

language prohibited taking the assessments from his bond. Defendant's mother, however, posted the bond. Section 124A-20(b)(1) is silent regarding the timing of the application of the waiver, and how the waiver should be applied when there has been bond posted or if the bond was posted by a third party.

¶ 16 Further, the Code's language could provide for exempting "the applicant" in addition to others, or that the waiver prohibits using bond for assessments, but it does not. As defendant notes, it is commonplace for someone to post bond for the benefit of another who is detained after arrest. The legislature is, and has been, aware of this practice, and is capable of describing such process. For example, section 110-7 of the Code repeatedly describes "a person other than the accused who has provided the money for the posting of bail," and "bail bond deposited by or on behalf of a defendant." *Id.* § 110-7(a), (f). Thus, the Code recognizes the dichotomy between a defendant posting bond, and someone posting for their benefit. When the legislature utilizes "certain language in one instance and wholly different language in another, the legislature indicates that different results were intended." (Internal quotation marks omitted.) *O'Brien*, 197 Ill. 2d at 94.

¶ 17 In short, as the legislature was cognizant of the existence and extent of the use of bail bonds, and that it is often not the defendant who posts bond, when it enacted section 124A-20(b)(1), it should have specified the waiver of assessments precludes taking bond to pay the assessments if that is what it intended. The legislature did not, and we cannot do so in its stead.

¶ 18 Thus, because the verbiage of section 124A-20(b)(1) is unambiguous, we need not look beyond it and will apply the language as written. We find this section did not prohibit the trial court from applying the bond defendant's mother posted toward his assessments.

¶ 19 C. Bail Bond Provision Does Not Conflict With Assessment Waiver

¶ 20 Defendant suggests section 124A-20(b)(1) conflicts with section 110-7 of the Code (725 ILCS 5/110-7 (West 2018)). We presume “that the legislature, in enacting various statutes, acts rationally and with full knowledge of all previous enactments.” *State v. Mikusch*, 138 Ill. 2d 242, 248 (1990). We also presume “the legislature will not enact a law which completely contradicts a prior statute without an express repeal of it.” *Id.* We construe statutes, if possible, in a manner that permits both to stand. *Id.* We disagree the aforementioned sections conflict.

¶ 21 As intimated, section 110-7 of the Code addresses the deposit and return of bail bonds. 725 ILCS 5/110-7(a), (f) (West 2018). Subsection (a) suggests the bail funds provided by another “may be used to pay costs, attorney’s fees, fines, or other purposes authorized by the court,” as it directs this must be included on the form used when bond is posted. Indeed, the form defendant and his mother signed includes this language. Subsection (f) provides bail funds, “deposited by or on behalf of a defendant,” cannot be used in another case “until the bail bond is first used to satisfy court costs and attorney’s fees in the case in which the bail bond has been deposited.” Thus, the application of defendant’s bond is wholly consistent with the Code.

¶ 22 Additionally, as section 110-7 specifically addresses the use of bond, it controls as the more specific statutory pronouncement. *Village of Chatham v. County of Sangamon*, 351 Ill. App. 3d 889, 896 (2004).

¶ 23 Finally, we also find this court’s opinion in *People v. Maxon*, 318 Ill. App. 3d 1209, 1216 (2001), analogous and helpful. There, we found an inability-to-pay determination “is irrelevant to the question of whether the trial court may order the fees to be paid out of a bond.” *Id.* In doing so, we noted the Code’s provision relating to reimbursement of appointed counsel fees did not contain language barring the trial court’s use of bond for the payment of fees should the defendant be found without funds to do so. *Id.* We also held “a finding that the defendant lacks the

ability to pay appointed counsel fees only relieves the defendant of the personal responsibility to pay such fees.” *Id.* Herein, neither section 110-7 nor section 124A-20 includes verbiage prohibiting the payment of assessments from a cash bond.

¶ 24 Thus, reading these sections in conjunction with one another leads to the conclusion the trial court’s determination defendant was entitled to a waiver exempting him from the payment of assessments only relieved him of that responsibility and did not prohibit the application of the bond to the assessments.

¶ 25 We therefore reject defendant’s contention *Maxon* is not useful, or that sections 124A-20 and 110-7 of the Code conflict. Instead, *Maxon* suggests an interpretation, based on the plain language of the sections, permitting a construction that allows both sections to stand. As well, we are mindful defendant has proffered several other cases, but none are analogous or persuasive.

¶ 26 D. Timing of Assessment Waiver Is Critical

¶ 27 Lastly, our holding turns on the specific timing between the trial court’s assessment waiver and its order to apply the bond. The court’s comments at the sentencing hearing and the specific language in the “Supplemental Financial Sentencing Order” unequivocally provide for the application of the cash bond to the assessments due *prior to* the application of the waiver of any remaining amount. Doing so in this order is consistent with both sections of the Code we have discussed. In short, because the court directed the cash bond to be utilized to reduce the amount of the assessments *prior to* applying the waiver to the remainder of the assessments, the court committed no error. Our holding is limited to these circumstances, and we offer no opinion as to whether a different process in terms of timing would support the same result.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the trial court’s judgment.

¶ 30

Affirmed.