



aggravated battery (720 ILCS 5/12-4(a) (West 2010)) and driving while her license was suspended (DWS) (625 ILCS 5/6-303(a) (West 2010)). At a November 2010 hearing on the State's petition, defendant admitted the DWS allegation but denied the aggravated battery allegation. The trial court then conducted a hearing on that charge and found that the State had proved it by a preponderance of the evidence. The trial court thereafter resentenced defendant to three years in prison for aggravated domestic battery and one year in prison for criminal damage to property, which the court ordered be served consecutively.

¶ 4 Defendant appeals, arguing that the trial court erred by (1) accepting her admission that she violated the terms of her probation without first determining whether a factual basis existed for that admission, (2) finding by a preponderance of the evidence that she committed aggravated battery, (3) sentencing her to an aggregate sentence of four years in prison, and (4) improperly calculating her violent-crime-victims-assistance-fund fine. Because we agree only that the court erred by calculating defendant's violent-crime-victims-assistance-fund fine, we affirm as modified and remand with directions for the court to amend its sentencing order in accordance with this order.

¶ 5 I. BACKGROUND

¶ 6 In August 2008, the State charged defendant with aggravated domestic battery (720 ILCS 5/12-3.3 (West 2008)). While released on bond, the State charged defendant with criminal damage to property in excess of \$300 (720 ILCS 5/21-1(1)(a) (West 2008)). In March 2009, the trial court consolidated defendant's cases. Defendant thereafter agreed to plead guilty to both charges in exchange for the State's recommendation of probation. The court accepted defendant's plea and sentenced her to concurrent terms of 24 months of probation in each case.

¶ 7 In September 2010, the State filed a petition to revoke defendant's probation in both cases, alleging that defendant violated the terms of her probation by committing two criminal offenses, aggravated battery (720 ILCS 5/12-4(a) (West 2010)) and DWS (625 ILCS 5/6-303(a) (West 2010)). At a November 2010 hearing on the State's petitions, defendant admitted violating her probation by driving while her license was suspended in both cases. The trial court thereafter heard evidence concerning the allegation that defendant violated her probation by committing aggravated battery. The evidence presented as to that charge revealed two versions of events, one indicating that defendant was the aggressor and the other indicating that defendant was arguably acting in self-defense. On the evidence presented, the court found that the State had proved that defendant committed aggravated battery by a preponderance of the evidence.

¶ 8 Following a January 2011 resentencing hearing, the trial court resentedenced defendant to three years in prison for aggravated domestic battery and one year in prison for criminal damage to property, which the court ordered be served consecutively as mandated by statute (730 ILCS 5/5-8-4(d)(9) (West 2010)).

¶ 9 Defendant appealed in both cases. In May 2011, this court granted defendant's motion to consolidate.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues that the trial court erred by (1) accepting her admission that she violated the terms of her probation without first determining whether a factual basis existed for that admission, (2) finding by a preponderance of the evidence that she committed aggravated battery, (3) resentencing her to an aggregate sentence of four years in prison, and (4) improperly



defendant was on probation, (2) not committing a crime was a requirement of defendant's probation, and (3) defendant committed the crime of DWS. Then, at the November 2010 hearing on the State's petitions to revoke defendant's probation, the court admonished defendant that the State was alleging she had "violated [her] probation by committing the offense of driving while suspended or revoked on or about July 28, 2010." Defendant replied that she understood that, and later acknowledged that she indeed had driven while her license was suspended on that date.

¶ 17 Accordingly, we reject defendant's claim that the trial court erred by accepting her admission to violating probation without first determining whether a factual basis existed for that admission.

¶ 18 B. Defendant's Claim That the Trial Court Erred by Finding by a Preponderance of the Evidence That She Committed Aggravated Battery

¶ 19 Defendant next contends that the trial court erred by finding by a preponderance of the evidence that she committed aggravated battery. As best we can tell, defendant asserts that because the court's finding that she committed aggravated battery—the second basis upon which the State sought to revoke defendant's probation—was erroneous, we should conclude that the court erred by granting the State's petition to revoke her probation. Because we have already determined that the court did not err by accepting defendant's admission to violating a condition of probation by driving on a suspended license, we need not decide whether the court erred by finding by a preponderance of the evidence that she committed aggravated battery. Once the court found that defendant had violated a condition of probation, it did not need to find that defendant also violated a condition of probation on a second occasion to take the next step of

revoking defendant's probation and resentencing her. Given this procedural context, the evidence regarding the aggravated battery charge that the court heard merely constitutes information that the court could consider when it decided what sentence to impose.

¶ 20 C. Defendant's Claim That the Trial Court Erred by Resentencing Her to an Aggregate Sentence of Four Years in Prison

¶ 21 Defendant next contends that the trial court erred by sentencing her to an aggregate sentence of four years in prison. As part of her argument that her sentence is excessive, defendant states, as follows:

"At the time [defendant] committed the crimes for which she was sentenced, she was 18[]years old and suffered from bipolar disorder. Both of the crimes were the result of [defendant's] losing her temper during arguments with loved ones. When [defendant] was sentenced, she was pregnant with her first child. Both [defendant] and her mother testified at sentencing that [defendant] had calmed down and was beginning to settle into a life of church, school, work, and time with family at home."

Defendant asserts that these mitigating factors demonstrate that the court's imposition of a four-year aggregate sentence was excessive. We disagree.

¶ 22 The Illinois Supreme Court has repeatedly outlined the high threshold for second-guessing a trial court's determination as to a defendant's sentence.

"The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great

deference. [*People v.*] *Stacey*, 193 Ill. 2d at 209, [737 N.E.2d 626, 629] (citing [*People v.*] *Fern*, 189 Ill. 2d at 53, [723 N.E.2d 207, 209] and *People v. Perruquet*, 68 Ill. 2d 149, 154, [368 N.E.2d 882, 884] (1977)). 'A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the "cold" record.' *Fern*, 189 Ill. 2d at 53, [723 N.E.2d at 209]. 'The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.

[Citations.] Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. [Citation.]" *Stacey*, 193 Ill. 2d at 209, [737 N.E.2d 626, 624]." *People v. Alexander*, 239 Ill. 2d 205, 212-13, 940 N.E.2d 1062, 1066 (2010) (reversing the appellate court's conclusion that the trial court's sentence was excessive)."

¶ 23 The record from defendant's January 2011 resentencing hearing in this case shows that the trial court carefully considered all the factors that defendant has asked this court to reweigh on appeal—namely, (1) defendant's age, (2) the fact that defendant was pregnant, and (3) the testimony defendant presented related to her rehabilitation. The court also considered, however, the evidence in aggravation, including the heinous nature of defendant's

acts—including the fact that her crimes involved violence. After considering the evidence in aggravation and mitigation, the court found that "further probation would deprecate the seriousness of the offense and not be consistent with the ends of justice." The court thereafter resented defendant to three years in prison on her aggravated domestic battery conviction and one year in prison on her criminal damage to property conviction, which the court ordered be served consecutively as mandated by statute. In light of the record and the fact that defendant was eligible for a maximum aggregate sentence of eight years in prison, we reject defendant's claim that the court abused its discretion by imposing an aggregate sentence of four years in prison.

¶ 24                   D. Defendant's Claim That the Trial Court Erred by Improperly  
                          Calculating Her Violent-Crime-Victims-Assistance-Fund Fine

¶ 25                   Last, defendant contends that the trial court erred by improperly calculating her violent-crime-victims-assistance-fund fine. Specifically, defendant asserts that the amount of her violent-crime-victims-assistance-fund fine should be reduced from \$20 in each case to \$4 in each case. The State concedes. We accept the State's concession.

¶ 26                   Pursuant to section 10(c)(1) of the Violent Crime Victims Assistance Act, the \$25 assessment defendant received is to be imposed only where the defendant is convicted of a qualifying felony and no other fine is imposed. 725 ILCS 240/10(c)(1) (West 2008). Where another fine is imposed, section 10(b) of the Violent Crime Victims Assistance Act requires, as follows, "there shall be an additional penalty collected \*\*\* upon conviction \*\*\* of \$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008). In each case, the court assessed \$15 in other fines. Thus, the court should have imposed \$4 in each case. See

*People v. Jake*, 2011 IL App (4th) 090779, ¶ 36, 960 N.E.2d 45, 52 (remanding for a reduction of fine from \$25 to \$4 where a \$5 drug-court assessment fine had been assessed).

¶ 27

### III. CONCLUSION

¶ 28 For the reasons stated, we remand for a reduction of the \$20 assessment in each case to \$4 in each case and issuance of an amended sentencing judgment so reflecting. We otherwise affirm the trial court's judgment as modified. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 29

Affirmed as modified; cause remanded with directions.