



negotiated agreement, the defendant was ordered to pay a \$1,000 drug fine, a \$500 drug assessment fee, a monthly probation service fee of \$25, a \$500 public defender reimbursement, a \$100 lab fee, and \$875 in restitution to the Carlyle police department. The defendant did not appeal from the probation order. About 22 months later, the State filed a petition to revoke the defendant's probation. The defendant appeared in court and admitted that he had violated certain terms of his probation. The court ordered a presentence investigation and scheduled a sentencing hearing. Following the presentation of the presentence report, the defendant's testimony, and arguments of counsel, the court sentenced the defendant to a four-year prison term followed by a one-year period of mandatory supervised release, and it "reimposed" the previously imposed fines and costs. The defendant filed a motion to reduce his sentence, and that motion was denied.

¶ 3 On appeal, the defendant contends that the trial court did not have statutory authority to order restitution to the Carlyle police department because a law enforcement agency is not considered a victim entitled to restitution under section 5-5-6(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-6(b) (West 2008)), and he asks this court to vacate the restitution order. The defendant also contends that he is entitled to a \$5-per-day credit against his fines for the 119 days he spent in custody prior to sentencing. We affirm the judgment as modified.

¶ 4 The record shows that in accordance with the terms of the negotiated agreement between the defendant and the State, the defendant pled guilty to the unlawful delivery charge and agreed to accept the imposition of certain penalties, including 30-months' probation, various fines, fees, and costs, and a restitution payment of \$875 to the Carlyle police department. Though the nature of the loss giving rise to restitution was not specifically stated in the record, the State's Attorney

noted that the Carlyle police department arranged a drug buy in which one of its confidential informants paid \$800 to the defendant in exchange for 84 grams of cannabis, indicating that the police department provided the funds for the transaction. The defendant did not take a direct appeal from the order of probation. He now seeks to challenge the propriety of the probation order's restitution provision in this appeal from the sentence imposed in the probation revocation matter.

¶ 5 The State argues that this court does not have jurisdiction to review the underlying order of probation in this appeal because restitution was an essential term of the negotiated plea to which both parties were bound, the trial court imposed the restitution pursuant to the terms of the negotiated agreement, and no direct appeal was taken from the probation order. The State also notes that the restitution was not reimposed when the defendant was resentenced after his probation was revoked. In response, the defendant argues that the circuit court did not have statutory authority to impose the restitution to the police department, and that the probation order is a void order that is subject to review at any time.

¶ 6 Where a defendant does not appeal from an order of probation and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of an underlying probation order in an appeal from a sentence imposed in a subsequent probation revocation matter, unless the underlying order is void. *People v. Felton*, 385 Ill. App. 3d 802, 804, 896 N.E.2d 910, 912 (2008). An order is void if the trial court is not authorized by statute, court rule, or case law to enter it, or if it exceeds its authority in entering it. *Felton*, 385 Ill. App. 3d at 805, 896 N.E.2d at 912. Void orders may be attacked at any time. *Felton*, 385 Ill. App. 3d at 805, 896 N.E.2d at 912.

¶ 7 Section 5-5-6 of the Code allows a court to order a defendant to pay restitution

to a victim who sustained any personal injury or property damage as a result of the defendant's criminal act. 730 ILCS 5/5-5-6 (West 2006). In determining the amount of the restitution, the court is to assess "actual out-of pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims" which were proximately caused by the defendant's conduct. 730 ILCS 5/5-5-6(b) (West 2006). But in circumstances where a law enforcement agency spends public money to purchase drugs in an undercover drug buy, the agency is not considered to be a victim entitled to restitution under section 5-5-6 of the Code, and a trial court does not have statutory authority to order a defendant to pay restitution to the agency. See, e.g., *People v. Mocaby*, 378 Ill. App. 3d 1095, 1101-02, 882 N.E.2d 1162, 1168-69 (2008); *People v. Danenberger*, 364 Ill. App. 3d 936, 941, 848 N.E.2d 637, 642 (2006). Courts have reasoned that funds used to purchase illegal drugs are part of a law enforcement agency's normal operating costs in the performance of its basic investigatory functions, and that the agency is not a victim under section 5-5-6(b) of Code. *Mocaby*, 378 Ill. App. 3d at 1101-02, 882 N.E.2d at 1168; *Danenberger*, 364 Ill. App. 3d at 941-43, 848 N.E.2d at 642-43.

¶ 8 That said, this court has upheld the propriety of a restitution provision in a probation order under circumstances where the defendant agreed to pay a law enforcement agency restitution as part of a negotiated plea agreement, where the restitution provision constituted an essential element of a negotiated plea agreement, and where the trial court approved the terms of the plea agreement as negotiated. See *People v. Lawrence*, 206 Ill. App. 3d 622, 625, 565 N.E.2d 322, 324 (1990). If the restitution provision constitutes an essential element of a negotiated plea, if legal consideration is present, and if both parties have in fact entered into an agreement, both parties will be bound by the terms of the agreement. *Lawrence*, 206 Ill. App. 3d

at 625, 565 N.E.2d at 324.

¶ 9 In this case, the transcript from the plea proceeding shows that when the plea agreement was presented to the trial court, restitution to the Carlyle police department was specifically identified as a term of the agreement. The transcript also shows that upon questioning by the trial court, the defendant acknowledged that he had discussed the plea agreement with his attorney and that he understood the charge, the possible penalties, and the terms of the negotiated plea agreement. The record shows that the trial court accepted the terms of the negotiated plea agreement and entered an order that conformed to the agreement. There is no indication in the record that the defendant's agreement to the negotiated plea was involuntary or uninformed. By entering into the negotiated plea agreement, the State gave up the right to seek the maximum penalty of five years in prison and a \$50,000 fine, and the defendant gave up his right to a trial by jury. In addition, both parties were spared the costs and uncertainties inherent in a jury trial. Both parties received the benefits of their bargain. After reviewing the record, we find that restitution was an essential term of a plea agreement entered by both parties for legal consideration and that the defendant was bound by the terms of his agreement. In this case, the restitution provision was entered pursuant to the express terms of the negotiated plea agreement and not pursuant to section 5-5-6 of the Code. The defendant has not shown that the restitution provision was entered in absence or in excess of the trial court's authority. Accordingly, we are without jurisdiction to review the probation order's restitution provision in this appeal.

¶ 10 Even assuming for the sake of argument that the defendant is claiming that restitution is part of the new sentence imposed in the probation revocation matter and thus a proper matter for review in this appeal, he cannot prevail. After considering

the evidence and arguments in the probation revocation sentencing hearing, the trial court sentenced the defendant to a four-year prison term and "reimposed" the fines and costs originally imposed. When a court revokes probation, it imposes a new sentence for the original crime. 730 ILCS 5/5-6-4(e) (West 2006); *Felton*, 385 Ill. App. 3d at 804, 896 N.E.2d at 913. The State has acknowledged that the trial court did not order restitution when it imposed the new sentence. As such, restitution is not part of the judgment and sentence from which this appeal is taken.

¶ 11 The defendant also contends that he is entitled to a credit of \$5 per day toward the eligible fines for the 119 days he spent in jail prior to sentencing. The State has conceded this point. Pursuant to our authority under Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we modify the resentencing order to provide the defendant with a total credit of \$595 against the eligible fines for the 119 days he spent in jail prior to sentencing.

¶ 12 For the reasons stated, the judgment of the circuit court of Clinton County is affirmed as modified.

¶ 13 Affirmed as modified.