

NOTICE
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2013 IL App (4th) 110777-U

NO. 4-11-0777

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 5, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
BROCK A. GOURLEY,)	No. 10TR3831
Defendant-Appellant.)	
)	Honorable
)	Mark A. Fellheimer,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed in part as modified, vacated in part, and remanded with directions, concluding (1) defendant was entitled to an additional \$5-a-day credit but (2) the \$5 "State Police Ops" assessment was a fine imposed in violation of *ex post facto* principles.

¶ 2 In June 2010, the Pontiac police department cited defendant, Brock A. Gourley, for driving while license suspended (DWLS). Following a May 2011 bench trial, the trial court found defendant guilty of DWLS and in August 2011, the court sentenced defendant to two years of supervision for DWLS, second offense, requiring him to perform 40 hours of community service and to pay various assessments, including a \$180 fine (730 ILCS 5/5-9-1 (West 2010)) and a \$5 "State Police Ops" fee.

¶ 3 Defendant appeals, arguing (1) he is entitled to two days' credit against his fine for the time he spent in custody prior to sentencing and (2) the "State Police Ops" fee must be

vacated. We affirm the trial court's judgment in part as modified, vacate in part, and remand with directions to (1) grant defendant one additional day of credit against his fine and (2) vacate the "State Police Ops" fee.

¶ 4

I. BACKGROUND

¶ 5 On June 21, 2010, the Pontiac police department cited defendant for DWLS. 625 ILCS 5/6-303(a) (West 2008). Defendant posted bond that day and was released.

¶ 6 On December 13, 2010, the trial court issued a warrant for defendant's arrest when defendant failed to appear in court. Police executed the warrant on December 30, 2010. Defendant posted bond that day and was released.

¶ 7 In February 2011, defendant waived his right to a jury trial. In May 2011, defendant's bench trial commenced, at which the parties presented the following evidence.

¶ 8 Corporal Darren Bagnell of the Pontiac police department testified he was on patrol on June 21, 2010, traveling eastbound on Howard Street in Pontiac, Illinois. Bagnell observed a black 1992 Honda Accord traveling westbound, and upon conducting an inquiry, Bagnell learned the vehicle's registration was expired. Thereafter, Bagnell performed a traffic stop on the Accord, which defendant was driving. A status check of defendant's Texas driver's license revealed the license was suspended. Bagnell then cited defendant for DWLS and released him after defendant posted a \$100 bond.

¶ 9 The trial court admitted into evidence a certified copy of defendant's driving abstract from Texas.

¶ 10 On this evidence, the trial court found defendant guilty of DWLS.

¶ 11 In May 2011, defendant filed a motion for new trial, alleging (1) the evidence was

insufficient, (2) defendant was innocent, and (3) the State failed to prove him guilty beyond a reasonable doubt because the Texas driving abstract did not indicate defendant's license was suspended on the day Bagnell cited defendant. Following a June 2011 hearing, the trial court denied defendant's motion.

¶ 12 In August 2011, the parties appeared for defendant's sentencing. The trial court sentenced defendant as to DWLS, second offense (625 ILCS 5/6-303(a) (West 2008) (eff. June 1, 2009)), to two years' court supervision and 40 hours of community service and ordered defendant to pay a \$180 fine and court costs. A certified copy of defendant's "payment status information" also lists, among other assessments, a \$5 "State Police Ops" fee.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant contends (1) he is entitled to two days' credit against his fine for the time he spent in custody prior to sentencing and (2) the "State Police Ops" fee must be vacated. We address defendant's contentions in turn.

¶ 16 A. Monetary Credit For Time Spent in Detention Prior to Sentencing

¶ 17 Defendant first argues he is entitled to additional credit against his \$180 fine for the time he spent in detention before sentencing. We agree.

¶ 18 Section 110-14 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/110-14 (West 2010)) provides, in relevant part, as follows:

"Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so

incarcerated upon application of the defendant."

¶ 19 The record indicates police arrested defendant and defendant later posted bond on two occasions: June 21, 2010, for DWLS, and December 30, 2010, for failure to appear in court. The trial court's written supervision order required defendant to pay a \$180 fine (citing 730 ILCS 5/5-9-1 (West 2008) (eff. July 1, 2009)). The clerk's "payment status information" printout lists as due a \$175 "Fine"; thus, it appears defendant received \$5 in credit for one of the days he spent in detention. The State concedes such credit was proper for defendant's June 21, 2010, incarceration. We accept the State's concession. See *People v. Stahr*, 255 Ill. App. 3d 624, 627-28, 627 N.E.2d 394, 396-97 (1994) (concluding the defendant, who was convicted of violating an order of protection, was entitled to a \$5 credit where the defendant was arrested and released on bail on the same day).

¶ 20 Defendant further contends he is entitled to an additional day of credit for the day he spent in custody on December 30, 2010. The State responds defendant's December 30, 2010, incarceration was for contempt of court, of which defendant was not convicted. Therefore, the State posits, defendant is not entitled to an additional \$5 credit. We disagree.

¶ 21 In considering defendant's claim, we find instructive the Second District's analysis in *People v. Hernandez*, 345 Ill. App. 3d 163, 803 N.E.2d 577 (2004). There, the defendant was indicted for aggravated criminal sexual abuse and was granted bail. *Hernandez*, 345 Ill. App. 3d at 165, 803 N.E.2d at 578. Three months later, the defendant failed to appear in court. *Id.* The trial court revoked the defendant's bond and issued a bench warrant, which indicated the "original violation" was aggravated criminal sexual abuse. (Internal quotation marks omitted.) *Id.* The defendant's bail was forfeited. *Id.* After police arrested the defendant, the defendant remained in

custody for the pendency of the proceedings. *Id.*

¶ 22 The State ultimately dismissed the defendant's aggravated criminal sexual abuse charge, instead charging the defendant with violation of bail bond. *Hernandez*, 345 Ill. App. 3d at 165, 803 N.E.2d at 578-79. Following a bench trial, the trial court found the defendant guilty. *Hernandez*, 345 Ill. App. 3d at 166, 803 N.E.2d at 579. On appeal, the defendant claimed the trial court erred when it refused to grant him credit for the time he spent in pretrial custody. *Hernandez*, 345 Ill. App. 3d at 165, 803 N.E.2d at 578. In concluding the defendant was entitled to credit pursuant to section 5-8-7(c) of the Unified Code of Corrections (730 ILCS 5/5-8-7(c) (West 2000)), the Second District noted as follows:

"The offense underlying the issuance of the bench warrant to arrest was aggravated criminal sexual abuse. The *** warrant for defendant's arrest was predicated on his failure to appear in court on the sexual abuse charge. The *** warrant did not formally charge defendant with committing a crime; it was merely a procedural tool that the trial court was statutorily required to utilize to effect defendant's return so that he could face prosecution on the sexual abuse charge." *Hernandez*, 345 Ill. App. 3d at 170, 803 N.E.2d at 582.

¶ 23 Here, the trial court issued a warrant for defendant's arrest when defendant failed to appear in court. The warrant for defendant's arrest lists defendant's offense as "FAILURE TO APPEAR." Thus, like the warrant in *Hernandez*, defendant's warrant was predicated on his failure to appear on the original underlying charge—in defendant's case, DWLS. Accordingly,

when defendant was incarcerated on December 30, 2010, he was incarcerated on the bailable offense of DWLS, of which he was ultimately convicted. Thus, defendant is entitled to an additional \$5 credit. See 725 ILCS 5/110-14 (West 2010).

¶ 24 B. The State Police Operations Assistance Fee

¶ 25 Defendant next asserts this court should vacate the \$5 "State Police Ops" fee because it was a fine improperly imposed in violation of *ex post facto* punishment. The State concedes the assessment should be vacated. We accept the State's concession.

¶ 26 The imposition of a fine that does not become effective until after a defendant commits an offense violates *ex post facto* principles. *People v. Devine*, 2012 IL App (4th) 101028, ¶ 10, 976 N.E.2d 624, 628. This court recently concluded, despite its statutory label, the State Police operations assistance fee is a fine. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030, 1035. Section 27.3a(1.5) of the Clerks of Courts Act (705 ILCS 105/27.3a(1.5) (West 2010), which provides for the State Police operations assistance fee, became effective on July 13, 2010 (Pub. Act 96-1029, § 6 (eff. July 13, 2010) (2010 Ill. Laws 3878, 3879)). Defendant was convicted of an offense that took place on June 21, 2010; therefore, the State Police operations assistance fee must be vacated because it violates *ex post facto* principles as applied to defendant.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment in part as modified, vacate in part, and remand with directions to (1) grant defendant an additional \$5 credit against his fine and (2) vacate the \$5 "State Police Ops" fee.

¶ 29 Affirmed in part as modified, vacated in part, and cause remanded with directions.