

No. 1-12-2163

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 C6 60245
)	
MITCHELL DAMPIER,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 **Held:** Evidence sufficient to support trial court's finding that defendant violated his probation by committing criminal damage to property; mittimus corrected; fines and fees order corrected.

¶ 2 Defendant Mitchell Dampier appeals from an order of the circuit court of Cook County revoking his probation for possession of a controlled substance. Defendant contends that the State presented insufficient evidence to support the revocation of his probation. He further

contends that his mittimus should be corrected to reflect the correct offense of which he was convicted, and that his fines and fees order should be corrected.

¶ 3 The record shows that on July 26, 2010, defendant entered a negotiated plea of guilty to count II of the indictment: one count of possession of a controlled substance, a Class 4 felony, in exchange for a sentence of two years' probation. On that same date, the State agreed to dismiss count I of the indictment, a Class 3 charge of a second or subsequent possession of a controlled substance offense. On January 8, 2011, defendant was arrested and charged with criminal damage to property in relation to an incident that occurred at a rail yard. The following day, the State filed a petition for violation of probation, alleging that defendant had violated his probation by committing criminal damage to property.

¶ 4 At the probation revocation hearing, Officer Locklin Jamison, a special agent with the Canadian National Railroad (CNR) police in Harvey, Illinois, testified that in the early morning hours of January 8, 2011, he participated in an investigation into theft from locomotives in the CNR rail yard. In relation thereto, he prepared a property inventory report of items which were recovered "by the locomotives." Those items were as follows: (1) 13 silver-colored metal brackets, 10 inches long; (2) four silver-colored small metal brackets, three inches long; (3) 4 silver-colored metal brackets, 24 inches long; (4) one silver colored flat metal bracket with red plastic caps; (5) one small metal 90-degree "angle," six inches long; (6) 1 yellow crowbar, 30 inches long with the marking "Stanley" on it; (7) one pair of cable cutters with green handles, marked "Greenlee Tool"; (8) 24 inches of copper, stranded, high tension cable in various lengths between 2 and 10 feet, 1 ½ inch in diameter, and black insulation. Officer Jamison testified that the cable cutters and crowbar did not belong to CNR. On cross-examination, Officer Jamison acknowledged that the inventoried items were not recovered on defendant's person.

¶ 5 Police Sergeant Wasek testified that he is employed for the Village of East Hazel Crest. Shortly after midnight on January 8, 2011, he was called to the CNR rail yard. Upon arriving, he spoke with CNR Officer Hedgepath about individuals who were observed trespassing in the train yard and possibly stripping copper from the train engine, and he and Officer Hedgepath searched the train yard. As they neared the first engine, Sergeant Wasek observed a person jump from the engine and run in a westerly direction. He now knows that person to be Orlando Dampier, defendant's brother. Sergeant Wasek further testified that he then observed two other people, subsequently identified as defendant and Allen Reynolds, jump from the second engine and run in a westerly direction. He and Officer Hedgepath chased defendant, Reynolds and Orlando and eventually placed them into custody. Sergeant Wasek made an in-court identification of defendant as one of the individuals who jumped from the second engine. One other individual also jumped from an engine, but was not apprehended.

¶ 6 CNR Officer James Conroy testified that at approximately 1 a.m. on January 8, 2011, he was notified that individuals had been taken into custody for stealing off the locomotives. He and another officer spoke with defendant at approximately 11 a.m. that same day, after advising him of his *Miranda* rights. Defendant signed a form indicating that he understood those rights and agreed to waive them. Officer Conroy then took defendant's statement regarding the incident and reduced it to writing, after which defendant reviewed and signed it. Defendant's statement was offered into evidence and published to the court, and it read, in pertinent part, as follows: "I Mitchell Dampier *** went into the train yard and took some wire from the train to scrap. I needed the money to pay some bills. I know what I did was wrong." On cross-examination, Officer Conroy testified that he did not ask defendant if he was under the influence of drugs or alcohol because defendant did not appear to be under the influence of anything.

¶ 7 The parties then stipulated that "the value of the damage done to the locomotives, of the items that were identified in the photographs by Officer Jamison and inventoried, would be in excess of \$10,000, but less than \$100,000."

¶ 8 Defendant testified that on the night of the incident he and Reynolds entered the rail yard by going under bushes and a fence. Once inside, Reynolds called "Eric" on his cell phone to locate him and they started walking in his direction. As they did so, they passed a dumpster and defendant took two pieces of cable out of it and "set them on the train" that was near the dumpster. He then returned to the dumpster, took out another piece of cable and walked back to the train and retrieved the two pieces of cable he had left on it. Defendant began to walk away from the train, but as he did so, he observed a patrol car approaching, so he dropped the cable by the dumpster and ran in the direction he observed Reynolds running. Defendant and Reynolds then "ran and jumped on the train" and "jumped to the other side," after which they were arrested.

¶ 9 Defendant further testified that he took wire only out of the dumpster and denied taking any "parts" off the train. He also denied using or having a crowbar or a cutting tool of any kind. Defendant testified that when he spoke with police, he told them that he had taken wire out of the dumpster and had not taken wire from the train and had not damaged the train to obtain the wire. Defendant acknowledged that he told police he was in the train yard to steal.

¶ 10 On cross-examination, defendant testified that he and Reynolds arrived at the rail yard in a U-Haul and acknowledged that he was trespassing there in order to steal. According to defendant, he only took three short pieces of cable from the dumpster, and he denied dropping it next to the train, or piling it up in that location. Defendant testified that Reynolds did not have a crowbar, and that he did not know if Orlando or Eric had one, or know who created the big pile

of wire and other items that were found and inventoried next to the train. The defense then rested.

¶ 11 In rebuttal, the State introduced a certified copy of defendant's conviction for possession of a controlled substance, the offense for which he was on probation at the time of the incident.

¶ 12 Following closing arguments, the trial court found defendant guilty of violation of probation. In doing so, the court stated that it believed that defendant "was part of a group there to strip the trains." A sentencing hearing was subsequently held on defendant's underlying possession of a controlled substance conviction, and defendant was sentenced to three years' imprisonment.

¶ 13 On appeal, defendant first contends that the evidence was insufficient to support the revocation of his probation. Specifically, defendant contends that the State failed to prove by a preponderance of the evidence that he committed criminal damage to property because it presented no evidence that any property was damaged.

¶ 14 At a probation revocation proceeding, the State has the burden of proving defendant's violation of probation by a preponderance of the evidence. 730 ILCS 5/5-6-4(c) (West 2010); *People v. Taube*, 299 Ill. App. 3d 715, 721 (1998). On appeal, we reverse a trial court's finding of violation of probation only where that finding was against the manifest weight of the evidence. *Taube*, 299 Ill. App. 3d at 721. A decision is against the manifest weight of the evidence where a contrary result is clearly evident. *People v. Matthews*, 165 Ill. App. 3d 342, 344-45 (1988). Further, a decision to terminate probation is not *per se* against the manifest weight of the evidence simply because there is a conflict in the evidence. *Taube*, 299 Ill. App. 3d at 721.

¶ 15 Here, the State based its petition to revoke defendant's probation on criminal damage to property. A person commits that offense when he or she knowingly damages any property of another. 720 ILCS 5/21-1(a)(1) (West 2010). Defendant contends that the State failed to show that any damage occurred to the trains in the rail yard or to the items that were recovered.

¶ 16 At the revocation of probation hearing, Sergeant Wasek testified that he observed defendant jump off a train engine in the rail yard, and Officer Locklin testified that numerous items, including copper cable of various lengths, metal brackets, a crowbar and cable cutters were found near that engine. At the hearing, defendant acknowledged that he traveled to the rail yard in a U-Haul with Reynolds and trespassed onto CNR property with the intent to steal. Officer Conroy testified that defendant signed a statement in which he admitted that he "took some wire from the train to scrap." Additionally, the parties stipulated that "the value of the damage done to the locomotives, of the items that were identified in the photographs by Officer Jamison and inventoried, would be in excess of \$10,000, but less than \$100,000." The only conflicting evidence consisted of defendant's testimony; however, conflicting evidence alone is insufficient to overcome a finding of violation of probation. *People v. Durk*, 195 Ill. App. 3d 335, 338 (1990).

¶ 17 Although defendant acknowledges that evidence of the cost of repairs is an appropriate measure of damage to property (*People v. Carraro*, 77 Ill. 2d 75, 79-80 (1979)), he maintains that the stipulation he entered into does not establish the element of damage because it merely establishes the value of the inventoried items, and not the cost to repair any damage to those items or the trains. While defendant is correct that the stipulation does not include the term "repairs," the fact remains that the stipulation specifically states that the quoted amount relates to "the damage done to the locomotives." We reject defendant's contention that the additional

language in the stipulation in any way negates the meaning of the phrase "damage done to the locomotives." In short, defendant stipulated to the fact that the locomotives at issue were damaged.

¶ 18 Further, the trial court was in a far better position to weigh the credibility of witnesses (*Durk*, 195 Ill. App. 3d at 338), and bore the responsibility in drawing reasonable inferences from basic facts to ultimate facts (*People v. Campbell*, 146 Ill. 2d 363, 375 (1992)). Here, in addition to the stipulation, we find that the trial court could also reasonably infer that defendant damaged the locomotives at issue, given defendant's statement that he took wire from the train to scrap, and the fact that he was seen jumping off a train next to which metal brackets, copper cable, and cable cutters were found.

¶ 19 In sum, when the stipulation is considered in conjunction with the evidence presented by the State, and the natural inferences arising therefrom, we find that the State met its burden of establishing defendant's violation of probation based on criminal damage to property by a preponderance of the evidence, and, accordingly, find that the trial court's determination that defendant was in violation of probation was not against the manifest weight of the evidence.

¶ 20 Defendant next argues, the State concedes, and we agree that his mittimus should be corrected to accurately reflect the offense of which he was convicted. The record shows that defendant's plea conviction for possession of a controlled substance was based on count II of the indictment, which was a Class 4 possession of a controlled substance offense in violation of section 402(c) of the Illinois Controlled Substances Act (720 ILCS 570/402(c) (West 2008)). In exchange for defendant's guilty plea to that count, the State agreed to dismiss count I of the indictment, a Class 3 charge of a second or subsequent possession of a controlled substance offense in violation of section 408(a) of the Illinois Controlled Substances Act (720 ILCS

570/408(a) (West 2008)). However, the mittimus erroneously reflects that defendant's conviction was for count I, the Class 3 offense, and that count II, the Class 4 offense, was dismissed.

¶ 21 Where the sentence reflected in the mittimus conflicts with the sentence imposed by the trial judge, as set out by the report of proceedings, the report of proceedings controls. *People v. Peoples*, 155 Ill. 2d 422, 496 (1993). Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we may order the circuit court clerk to make the necessary corrections without remand. *People v. Magee*, 374 Ill. App. 3d 1024, 1035 (2007). We thus direct the clerk of the circuit court to correct the mittimus to reflect that defendant's conviction was for count II, a Class 4 possession of a controlled substance offense, and that the count that was dismissed was count I, a Class 3 offense.

¶ 22 Defendant finally challenges certain pecuniary penalties imposed by the court and asks that his fines and fees order be corrected. That State maintains that defendant is precluded from raising this argument because the fines and fees order is merely voidable and not void. However, a fines and fees order not authorized by statute is void and may be challenged at any time. *People v. Rigsby*, 405 Ill. App. 3d 916, 920 (2010) (citing *People v. Arna*, 168 Ill. 2d 107, 113 (1995)); see also *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 3-8, 30. Our review of the propriety of imposition of fines and fees is *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 23 Defendant points out, the State concedes, and we agree, that there is a mathematical error in his fines and fees order. The total of all of the fines and fees which were imposed upon him is \$665; however, the fines and fees order incorrectly lists that total as \$685. Accordingly, we will use the accurate sum of \$665 as the base from which we determine the corrected total amount of his fines and fees after addressing his arguments regarding improperly assessed fines and fees.

¶ 24 Defendant contends that the \$25 Court Services Assessment (55 ILCS 5/5-1103 (West 2010)) was incorrectly imposed upon him because possession of a controlled substance is not one of the types of convictions for which such a fee can be imposed, as reflected by the statute's plain language. However, as the State points out, and defendant acknowledges, this court has held that the \$25 Court Services Fee applies to all criminal convictions. *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 18. Accordingly, defendant's claim that this particular fee should be vacated fails.

¶ 25 Defendant further contends, the State concedes, and we agree, that he is entitled to \$5 per day presentence custody credit toward \$35 in fines which he was assessed. Pursuant to section 110-14(a) of the Code of Criminal Procedure (725 ILCS 5/110-14(a) (West 2010)), a defendant who is incarcerated on a bailable offense and who, upon conviction, is assessed a fine, is entitled to a \$5 credit toward that fine for each day spent in presentence custody. Here, defendant spent 548 days in presentence custody, and is thus entitled to \$2,740 in credit, to be applied toward applicable fines. In turn, the \$30 Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2010)) and the \$5 Drug Court fee (55 ILCS 5/5-1101(f) (West 2010)) which were imposed upon defendant have been held to constitute fines. *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19. These charges total \$35 and defendant is entitled to that amount in credit from his presentence custody credit. *Williams*, 2011 IL App (1st) 091667-B, ¶ 19.

¶ 26 Defendant finally argues, the State concedes, and we agree that he was erroneously assessed a \$25 Violent Crime Victim Assistance (VCVA) fine (725 ILCS 240/10(c) (West 2010)). Pursuant to the statutory language in effect at the time of defendant's probation sentencing, a \$25 VCVA fine is proper only in instances where no other fine was imposed upon defendant, and, in instances where other fines were imposed, only a \$4 VCVA fine may be

imposed for each \$40, or fraction thereof, of fine imposed. 725 ILCS 240/10(b), (c) (West 2010). Here, \$35 in other fines were imposed upon defendant, comprised by the \$30 Children's Advocacy Center fee and the \$5 Drug Court fee. Accordingly, defendant should only have been assessed a \$4 VCVA fine. We therefore order that defendant's \$25 VCVA fine be vacated and replaced with a \$4 VCVA fine.

¶ 27 Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*Magee*, 374 Ill. App. 3d at 1035), we direct the clerk of the circuit court to correct the mittimus to reflect that defendant's conviction was for count II, a Class 4 possession of a controlled substance offense. We further direct the clerk to correct the fines and fees order to reflect that defendant's presentence custody credit satisfies his \$30 Children's Advocacy Center fee and \$5 Drug Court fee in their entirety, and the vacation of defendant's \$25 VCVA fine, which is to be replaced by a \$4 VCVA fine, resulting in a corrected assessment amount of \$609. We affirm the trial court's judgment in all other respects.

¶ 28 Affirmed in part, vacated in part; mittimus corrected; fines and fees order corrected.