2016 IL App (4th) 140003-U

NO. 4-14-0003

FILED
February 4, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
RICHARD P. HOLLGARTH,	)	No. 12CF404
Defendant-Appellant.	)	
	)	Honorable
	)	Mitchell K. Shick,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment in part, vacated in part, and remanded with directions, (1) holding the court did not err in sentencing defendant to concurrent 14-year terms of imprisonment on counts I and II, (2) reducing the 6-year term of imprisonment on count III to 3 years, and (3) remanding for the proper assessment of fines and fees and credit against eligible fines.

¶ 2 In March 2013, a jury convicted defendant, Richard P. Hollgarth, of unlawful possession of methamphetamine precursor (count I), unlawful possession of methamphetamine manufacturing material (count II), and aggravated fleeing or attempting to elude a peace officer (count III). In August 2013, the trial court sentenced defendant to concurrent prison terms of 14 years on counts I and II, and an extended-term sentence of 6 years in prison on count III. Defendant appeals, arguing the 14-year sentences are excessive, the extended-term sentence should be reduced to the maximum nonextended term of 3 years, certain assessments must be

vacated, and he is entitled to $5-per-day credit against several imposed fines. We affirm in part, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In November 2012, defendant was charged with unlawful possession of methamphetamine precursor (count I) (720 ILCS 646/20(a)(1) (West 2012)), unlawful possession of methamphetamine-manufacturing material (count II) (720 ILCS 646/30(a) (West 2012)), and aggravated fleeing or attempting to elude a peace officer (count III) (625 ILCS 5/11-204.1(a)(1) (West 2012)). Counts I and II were Class 2 felonies; however, defendant was subject to Class X sentencing due to his criminal history (730 ILCS 5/5-4.5-95(b) (West 2012)). Count III was a Class 4 felony; however, defendant was eligible for extended-term sentencing, if appropriate under the circumstances (625 ILCS 5/11-204.1(b) (West 2012); 730 ILCS 5/5-4.5-45(a) (West 2012)).

¶ 5 In March 2013, the case proceeded to a jury trial. James Charboneau testified he worked for defendant's handyman service in the summer of 2012. During that time period, Charboneau saw defendant smoke methamphetamine in defendant's white van. Also during that time, on two occasions Charboneau purchased pseudoephedrine for defendant in exchange for $25.

¶ 6 Charboneau testified defendant gave him a ride to the Moto Mart in Mattoon on November 2, 2012, at 1:30 a.m. They were in defendant's white van. Charboneau planned to meet his sister-in-law at the Moto Mart. Surveillance video from the Moto Mart was published to the jury. Charboneau described what was depicted on the video. It showed defendant's white van pull into the Moto Mart lot. Charboneau and defendant entered the Moto Mart. Charboneau's sister-in-law pulled into the parking lot and exited her vehicle. Mattoon police

officer Ray Hall's police car pulled into the parking lot. Defendant got into the white van and pulled away. Hall's car pulled out of the parking lot shortly after defendant. Charboneau left with his sister-in-law.

¶ 7 Charboneau testified he later saw defendant in a blue pickup truck. Defendant told Charboneau he had gotten into a wreck with his white van.

¶ 8 Mattoon police officer Raymond Hall testified he was on duty on November 2, 2012, at 1:30 a.m. As Hall approached the Moto Mart, he noticed a white conversion van and a man in a brown hooded jacket standing by the driver's door. He recognized the van and license plate number from an email he had seen about the van and defendant and his wife's involvement in manufacturing methamphetamine. Hall saw Charboneau walk into the Moto Mart with an unknown female. Then he noticed the van leaving. Hall later viewed the surveillance video from the Moto Mart and saw the man in the brown jacket get into the driver's seat of the van. Hall identified defendant as the driver.

¶ 9 Hall followed the white van and saw the van go through an intersection without stopping at the stop sign and speed away. As soon as Hall saw the traffic infraction, he initiated the emergency lights and siren on his vehicle, which also activated the in-car camera. The recording was published to the jury. Although Hall did not have radar in his vehicle, he was traveling at 86 miles an hour and could not catch up to the van. Hall got up to 96 miles an hour and could not keep up with the van. Hall lost sight of the van. Hall found the van where it had crashed into a field. The van had sustained serious damage and was stuck in the field. No one was in the van.

¶ 10 Officer Jeff Wines testified as an inspector with the East Central Illinois Drug Task Force, which consists of officers from several law enforcement agencies who primarily

investigate narcotic offenses. Pseudoephedrine is a methamphetamine precursor. Wines testified pseudoephedrine purchases can be tracked to specific individuals through a computer database, along with the date, time, location of the purchases, and the number of grams purchased. Through the database, Wines noticed the names of defendant and his wife appearing repeatedly for purchases of pseudoephedrine in different towns. Wines also reviewed Charboneau's pseudoephedrine purchases. Wines began to notice a pattern of purchases suggesting the collection of enough pseudoephedrine to make a quantity of methamphetamine.

¶ 11 Wines testified he was called to the field where the white van had crashed in the morning hours of November 2, 2012. Wines observed several items outside the driver's door of the van, including a Baggie containing coffee filters with a white residue on them. Inside the van, Wines found a bottle of drain cleaner, empty mason jars, tubing, and an apparatus fashioned as a hydrogen chloride (HCI) generator. These are items commonly used to manufacture methamphetamine.

¶ 12 Wines arrested defendant on November 8 or 9, 2012. During Wines' interview of defendant, he denied being the driver of the van at the Moto Mart on November 2, 2012. He claimed James was the driver but said he did not know James' last name. Defendant continued denying he was the driver even after he was shown still photos from the surveillance video. He also denied giving anyone pseudoephedrine or receiving pseudoephedrine from anyone and denied he was involved with methamphetamine manufacturing. He did admit using methamphetamine.

¶ 13 Thomas Houser testified in his capacity as an Illinois State Police (ISP) trooper assigned to the East Central Illinois Task Force, whose function includes investigating and dismantling methamphetamine labs. Houser testified, although there are different recipes and

methods of manufacturing methamphetamine, the common ingredient in all recipes is pseudoephedrine. Materials used to make methamphetamine commonly include coffee filters, mason jars, Drano cleaner, and an HCI generator that can be made using a lawn sprayer and tubing.

¶ 14 Houser testified he was called to the field where the van was located on the morning of November 2, 2012, around 2 a.m. Houser searched the van and found professional drain cleaner, two mason jars, a lawn sprayer fashioned into an HCI generator, and coffee filters. In Houser's opinion, these items constituted methamphetamine-manufacturing materials.

¶ 15 Daniel Bryant testified in his capacity as a drug chemist in the ISP forensic lab in Chicago, Illinois. Bryant analyzed the residue on one of the coffee filters located at the scene and found the presence of methamphetamine.

¶ 16 The jury found defendant guilty of unlawful possession of methamphetamine precursor, unlawful possession of methamphetamine manufacturing materials, and aggravated fleeing or attempting to elude a police officer.

¶ 17 In April 2013, defense counsel filed a motion for new trial and/or arrest of judgment. In May 2013, prior to the case proceeding to sentencing, the trial court heard argument on defendant's motion for a new trial and/or arrest of judgment and denied the motion. At the sentencing hearing that followed, defendant complained he had not received proper representation by defense counsel. Because defendant's lawyer was scheduled to retire in the near future, the court appointed new counsel and the case was continued.

¶ 18 In July 2013, newly appointed defense counsel filed a supplemental motion for new trial. In August 2013, the trial court heard testimony and arguments regarding defendant's posttrial motion. The court denied the motion and proceeded to the sentencing hearing.

¶ 19 After hearing defendant's statement in allocution and the arguments of counsel, the court noted it had considered the evidence at trial and at the sentencing hearing, the presentence investigation report (PSI), the financial impact of incarceration, evidence presented in mitigation and aggravation, and defendant's statement in allocution. The court found defendant's conduct in traveling at a high rate of speed without headlights on was extremely dangerous and it was amazing defendant had not killed himself or someone else. This was particularly so given defendant admitted he had been high while doing so. The court found defendant's imprisonment was necessary for the protection of the public. On count I, the court sentenced defendant to 14 years in DOC with 288 days' credit, followed by 3 years' mandatory supervised release (MSR). The court ordered costs including "$100 lab fee, $1,000 mandatory assessment, $25 drug assessment, $500 contribution to the Task Force, $100 V.C.V.A. fine, [$5] drug court fees." On count II, the court sentenced defendant to a concurrent term of 14 years in DOC, followed by 3 years' MSR, and 288 days' credit. The court imposed a "$1,000 mandatory assessment, $25 drug assessment." On count III, the court sentenced defendant to a concurrent extended term of six years in DOC, followed by one year of MSR, and 288 days' credit.

¶ 20 In August 2013, defendant filed a motion to reconsider sentence alleging the trial court failed to properly consider (1) as a mitigating factor how imprisonment "will entail excessive hardship to his dependents"; (2) the factors in aggravation and mitigation; and (3) the evidence presented at trial and in the supplemental motion for a new hearing relating to defendant's involvement in the case. In December 2013, defense counsel filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). At a December 2013, hearing the court denied the motion.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues (1) his 14-year sentences are excessive and the trial court abused its discretion by failing to consider the significant amount of mitigation evidence; (2) the extended-term sentence on the conviction for aggravated fleeing or attempting to elude a police officer (count III) should be reduced to the maximum nonextended term because that offense was not the most serious class offense of which he was convicted; and (3) one of the $1,000 methamphetamine assessments and the $500 drug-task-force assessments should be vacated, and defendant should be granted $5-per-day credit against his remaining fines. The State (1) argues defendant has forfeited the excessive-sentence issue because he did not adequately raise it in his posttrial motion; alternatively, the court did not abuse its discretion when sentencing defendant; (2) concedes the sentence on count III should be reduced; (3) concedes the two assessments should be vacated but argues other mandatory fines should be imposed; and (4) agrees defendant is entitled to $1,440 in credit against the fines.

¶ 24 A. The 14-Year Sentences

¶ 25 Defendant contends the trial court abused its discretion when sentencing him to concurrent terms of 14 years in DOC because the court failed to consider a significant amount of mitigating evidence, *i.e.*, (1) the nonviolent nature of the drug offenses where there was no proof he was manufacturing methamphetamine for other than his personal use; (2) his unstable upbringing by a drug-addicted mother, which led to him being taken into custody by the Department of Children and Family Services (DCFS) and dropping out of school; and (3) his lengthy history of drug addiction, which started at a young age and has caused him repeated relapses in his adult life.

¶ 26 The State initially argues defendant did not adequately preserve this issue for

review because his motion for reconsideration did not raise the issue with enough specificity to provide the trial court with an opportunity for review. Defendant responds no forfeiture occurred "because the claim raised in [his] post-sentencing motion is functionally equivalent to the claim he raised on appeal." In the alternative, defendant argues we should review this claim pursuant to the plain-error doctrine. We need not decide whether defendant has forfeited his claim because whether we review his arguments on the merits or under the plain-error doctrine, we find no error. See *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010) (the first step in plain-error analysis is to determine whether error occurred).

¶ 27 It is undisputed defendant, because of his criminal history, was required to be sentenced as a Class X offender on counts I and II (730 ILCS 5/5-4.5-95(b) (West 2012)). As such, he was eligible for a maximum sentence of 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2012) (nonextended-term sentencing range for a Class X felony is between 6 and 30 years' imprisonment). Here, the trial court fashioned two concurrent 14-year prison sentences on counts I and II, which are within the statutorily permissible range. A sentence within the statutory range will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22, 959 N.E.2d 703.

¶ 28 The Illinois Constitution mandates "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const.1970, art. I, § 11. " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting

People v. Hernandez, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

¶ 29 A trial court has broad discretion in imposing a sentence. *People v. Chester*, 409 Ill. App. 3d 442, 450, 949 N.E.2d 1111, 1118-19 (2011). "A reviewing court gives great deference to the trial court's sentencing decision 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." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008).

¶ 30 While defendant argues the trial court did not adequately consider his drug addiction and his unstable upbringing, we presume the sentencing court considered the mitigating evidence before it. *People v. Flores*, 404 Ill. App. 3d 155, 158, 935 N.E.2d 1151, 1155 (2010). Further, the "existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). In addition, "[t]he trial court is not required to expressly indicate its consideration of all mitigating factors and what weight each factor should be assigned." *People v. Kyse*, 220 Ill. App. 3d 971, 975, 581 N.E.2d 285, 288 (1991). Instead, it is presumed a trial court considered all relevant mitigating and aggravating factors in fashioning a sentence, and that presumption will not be overcome absent explicit evidence from the record the trial court failed to consider mitigating factors. *Flores*, 404 Ill. App. 3d at 158, 935 N.E.2d at 1155. Our review of the record reveals no such failure.

¶ 31 The record leaves no doubt defendant had an unstable childhood and has been

battling a serious substance-abuse addiction for approximately 15 years, resulting in multiple criminal convictions and sentences to DOC. However, defendant continued to deny his involvement in the drug charges even at the sentencing hearings.

¶ 32 Defendant made a statement in allocution before the first sentencing hearing was continued. He admitted he had a drug problem and admitted to the fleeing and eluding. Defendant stated he "was drugged, but I wasn't involved with no meth. Everybody I associated with, yeah, they was. They are running free right now." Defendant stated he was sorry for what he had done in life, but he again stated, "I wasn't guilty of no meth." Defendant apologized for "running" and stated the only reason he ran was because he had a "driving ticket from up there, and I was trying to get treatment." Defendant stated he had tried to get treatment but was told he was not eligible. He stated he was "crying out for help, and I was just kicked down." During the continued sentencing hearing, defendant made additional comments. He asked the court for mercy, pointing out he had three children. Defendant again admitted he was guilty of fleeing and eluding and he had a drug problem. He stated he "apparently" was on methamphetamine that night. He admitted drugs had caused him problems and he had made bad choices.

¶ 33 The trial court also had before it the PSI. It reflected defendant reportedly had a lengthy history of drug abuse dating back to age 15 when he first used cocaine. He dropped out of school. At age 16, he began using crack cocaine as well as marijuana. By age 17, he would use any drug he could obtain. Later that year, defendant shot and killed his sister while he was under the influence of drugs. He was convicted of involuntary manslaughter and sentenced to five years in DOC. After his release, defendant stayed clean from drugs for only a short period and was convicted of possession of cocaine and again sentenced to DOC. After his release, he was introduced to methamphetamine in 2004. In 2006, defendant was sentenced to DOC for

possession of methamphetamine precursor. After his release in 2008, defendant was clean until he was injured at work and became addicted to prescription pain medication. In 2012, defendant began smoking marijuana again. When a coworker brought methamphetamine to work and offered it to defendant, he began using again until he was arrested for the current offense. Defendant apparently completed substance-abuse treatment while in DOC.

¶ 34 According to the PSI, defendant reportedly had never had any contact with his father and only occasional contact with his mother. Due to his mother's involvement with drugs and crime, their relationship had been "bad." Defendant entered protective custody when he was 11 years old, where he stayed until he started living various places at age 15. Defendant indicated his criminal and drug problems were rooted in the complete lack of parenting by his mother. Defendant had three children, two with his wife, Rachel. Rachel was unable to work due to a disability and had applied for Social Security disability benefits.

¶ 35 According to the PSI, defendant's criminal history dated back to 1995, including aggravated assault with a deadly weapon, possession of a firearm, involuntary manslaughter of a family member, manufacture or delivery of cocaine, possession of methamphetamine precursor, possession of cannabis, and three pending charges of driving on a suspended license. Regarding defendant's attitudes and values, the PSI states, " The [d]efendant exhibits antisocial attitudes. These include an unfavorable attitude toward convention and being supportive of crime. He has a poor attitude toward this conviction and other convictions in the past."

¶ 36 After hearing arguments by the State and defense counsel, the trial court stated it had considered:

> "[T]he evidence at trial, the evidence I have heard here today, the [PSI], the financial impact of the incarceration statement, which I'll

> take judicial notice of, offered by the State regarding the cost of incarceration for a defendant. I've considered evidence and information offered by the parties in aggravation and mitigation and as set forth in the [PSI], arguments as to the sentencing alternatives, and [defendant's] statement in allocution.
>
> Considering all those things, *** the danger that [defendant] imposed at the speeds you traveled without lights on at night on a country road, it is amazing you didn't kill yourself or kill someone else. But it was so extremely dangerous, particularly now that there is evidence you were high at the time. I think all of those things certainly are aggravated—aggravating factors in the case as well.
>
> I do find that based upon all that I have said, the history, character, and condition of the offender, that the defendant's imprisonment is necessary for the protection of the public."

¶ 37 After stating the sentence, the trial court indicated it would recommend defendant participate in drug treatment if such services were offered at DOC. The court stated, "I do believe that is one thing that [defendant] desperately needs in addition to perhaps mental health counseling, but certainly the substance abuse has always been part of his life and led him down this road." The court noted this was defendant's fifth felony conviction and indicated a hope while defendant was serving his sentence "something registers" to turn his life around.

¶ 38 We find no affirmative showing the trial court failed to adequately consider the mitigating factors. To the contrary, the court knew defendant was 32 years old, attributed his

conduct to drug addiction, and desired treatment. In fact, the court recommended drug treatment for defendant while in prison. Arguably the fact defendant had a dismal life may have contributed to the court's sentence near the mid-line of the available 6- to 30-year sentencing range, as opposed to the high end of the range.

¶ 39 When determining the sentence, the trial court must balance the interests of society against the defendant's potential for rehabilitation; however, the court is not required to give greater weight to that factor than to the seriousness of the crime. "In fact, the seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence." *People v. Tye*, 323 Ill. App. 3d 872, 890, 753 N.E.2d 324, 341 (2001).

¶ 40 In the present case, the trial court found defendant's conduct was extremely dangerous. While under the influence of methamphetamine, defendant drove at speeds in excess of 90 miles an hour on public roads, without lights, while transporting dangerous methamphetamine-manufacturing materials in his van. As the court stated, it was amazing defendant had not killed himself or someone else. We also note defendant had already killed someone while under the influence of drugs. Defendant was eligible for 30-year sentences on counts I and II. We do not find the court abused its discretion by sentencing defendant to concurrent terms of 14 years in prison.

¶ 41 B. The Sentence on Count III

¶ 42 Defendant contends he was not eligible for extended-term sentencing on his Class 4 felony of fleeing or attempting to elude a peace officer (count III), which was committed during the same course of conduct as his Class 2 felonies of unlawful possession of methamphetamine precursor (count I) and unlawful possession of methamphetamine manufacturing material (count II). Defense counsel did not object to the error at the time of

sentencing and, therefore, he has forfeited the issue on appeal. With the abolition of the void-sentence rule in *People v. Castleberry*, 2015 IL 116916, defendant acknowledges he cannot rely on the void-sentence rule to seek relief for this error. He maintains he is nonetheless entitled to relief because (1) his invalid extended-term sentence qualifies as plain error, and (2) his counsel was ineffective for not objecting to the invalid sentence. The State concedes the error and, to serve the interests of justice in this case, has declined to raise the forfeiture issue. We accept the State's concession.

¶ 43 A defendant convicted of multiple offenses of differing classes may be sentenced to an extended-term sentence pursuant to section 5-8-2(a) of the Unified Code of Corrections (Unified Code) only on those offenses within the most serious class. *People v. Jordan*, 103 Ill. 2d 192, 205-06, 469 N.E.2d 569, 575 (1984); 730 ILCS 5/5-8-2(a) (West 2012). Extended-term sentences may be imposed on differing class offenses if they arise from unrelated courses of conduct in which there was a substantial change in the nature of the defendant's criminal objective. *People v. Bell*, 196 Ill. 2d 343, 354, 751 N.E.2d 1143, 1149 (2001).

¶ 44 Here, defendant's flight and simultaneous possession of the methamphetamine-manufacturing materials were part of the same course of conduct and served the same overarching criminal objective of producing methamphetamine. Consequently, defendant was not eligible for extended-term sentencing on the lower class offense of aggravated fleeing or attempting to elude a peace officer. We therefore vacate the extended-term portion of defendant's sentence for aggravated fleeing or attempting to elude a peace officer and reduce the sentence to the maximum nonextended prison term of three years.

¶ 45 C. The Fines, Fees, and Credit Against Fines

¶ 46 Defendant argues the trial court made three errors when assessing fines against

him, *i.e.*, imposing $1,000 methamphetamine assessments on both counts I and II, requiring a $500 contribution to the local drug task force, and failing to grant him the $5-per-day credit against the remaining fines. Defendant once again points out his trial counsel did not object to these errors at sentencing and, because of the ruling in *Castleberry*, defendant acknowledges he can no longer rely on the void-sentencing rule to seek relief. He argues he is nonetheless entitled to the monetary relief requested under the plain-error doctrine and because of ineffective assistance of counsel.

¶ 47 The State concedes the second methamphetamine assessment and the contribution to the local drug task force were imposed in error and agrees they should be vacated. However, the State also argues this court should remand for the trial court to recalculate and impose mandatory fines, specifically (1) expungement of juvenile records fine of $30 (730 ILCS 5/5-9-1.17)(a) (West 2012)); (2) methamphetamine street-value fine (730 ILCS 5/5-9-1.1-5(a) (West 2012)); (3) methamphetamine law enforcement fund fine of $100 (730 ILCS 5/5-9-1.1-5(b) (West 2012)); (4) prescription pill disposal fine of $20 (730 ILCS 5/5-9-1.1-5(d) (West 2012)); (5) driver's education fund fine of an additional $4 for each $40, or fraction thereof, of fine imposed (625 ILCS 5/16-104a(a) (West 2012)); and (6) lump sum surcharge fine of an additional $10 for each $40, or fraction thereof, of fine imposed (730 ILCS 5/5-9-1(c) (West 2012)). The State maintains defendant is entitled to $1,440 in credit against creditable fines.

¶ 48 Defendant disagrees with the State's position we should remand for recalculation and imposition of additional mandatory fines, arguing *Castleberry* precludes the State from seeking to increase a defendant's sentence on appeal because Illinois Supreme Court Rule 604(a) (eff. Feb. 6, 2013) does not authorize the State to appeal a sentencing order. *Castleberry* at ¶¶ 19-25. The State asserts *Castleberry* did not overrule this court's rejection of the same

argument in *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 149-150, 16 N.E.3d 13, which recognized the defendant's appeal placed the entire sentence before this court for review.

¶ 49 We accept defendant's argument and the State's concession the trial court improperly imposed the two assessments specified by the parties. We further accept the State's concession defendant is entitled to up to $1,440 in sentence credit. However, we disagree with the State's argument *Castleberry* did not overrule this court's holding in *Warren* regarding our ability to order the trial court to impose additional fines on remand.

¶ 50 Under section 80(a)(3) of the Methamphetamine Control and Community Protection Act (Act), every defendant convicted of a Class 2 offense under the Act must be charged with a $1,000 assessment. 720 ILCS 646/80(a)(3) (West 2012). However, section 80(g) of the Act states the court "shall not impose more than one assessment per complaint, indictment, or information." 720 ILCS 646/80(g) (West 2012). Here, the trial court erroneously imposed one such assessment for each of the Class 2 methamphetamine-related offenses for which defendant was convicted.

¶ 51 The trial court also imposed a $500 contribution to the "Task Force," presumably referring to the East Central Illinois Drug Task Force involved in the investigation of this case. The court did not indicate the statutory authority under which it imposed this assessment; however, defendant posits it was pursuant to section 5-6-3(b)(13) or section 5-6-3.1(c)(13) of the Unified Code. 730 ILCS 5/5-6-3(b)(13), 5-6-3.1(c)(13) (West 2012). These sections of the Unified Code permit courts to require a defendant sentenced to probation, conditional discharge, or supervision to "contribute a reasonable sum of money" to a "local anti-crime program." Within the definition of "[l]ocal anti-crime program" in the Anti-Crime Advisory Council Act is a "drug task force composed of or created by local law enforcement agencies" such as the East

Central Illinois Drug Task Force. 20 ILCS 3910/7 (West 2012); see *People v. Atherton*, 406 Ill. App. 3d 598, 621, 940 N.E.2d 775, 795-96 (2010) (vacating unauthorized order for the defendant to contribute to Crime Stoppers where a prison sentence was imposed and the contribution was only authorized when a defendant was sentenced to probation, conditional discharge, or supervision). Here, defendant was sentenced to DOC. Therefore, we vacate the $500 anti-crime assessment on count I and the $1,000 methamphetamine assessment on count II.

¶ 52 We next address the State's argument we should order the trial court to impose additional fines on remand. After abolishing the void-sentence rule, the supreme court noted Illinois Supreme Court Rule 604(a) (eff. Feb. 6, 2013) provides the specific situations where the State may appeal in a criminal case. *Castleberry* at ¶ 21. Rule 604 does not allow the State to appeal or cross-appeal a sentencing order. *Id.* According to the court, while the State is free to raise any argument of record in support of the trial court's judgment, it cannot attack the sentencing order in any way with a view toward enlarging its own rights or lessening the rights of its adversary. *Id.* at ¶ 22 (citing *United States v. American Ry. Express Co.*, 265 U.S. 425, 435 (1924)). Therefore, we reject the State's argument we can order additional fines to be imposed on remand.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, we affirm the trial court's judgment in part, vacate in part, and remand with directions to award defendant the appropriate credit against creditable fines. We vacate the $1,000 methamphetamine assessment on count II and the $500 contribution to the local drug task force on count I. We order the trial court to reduce defendant's sentence on count IIII to three years and issue an amended sentencing judgment consistent with this order. As part of our judgment, because the State successfully defended a portion of this appeal, we

award the State its $50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 619, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 55 Affirmed in part and vacated in part; cause remanded with directions.