

**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).

2016 IL App (4th) 140757-U

NO. 4-14-0757

**FILED**  
August 9, 2016  
Carla Bender  
4<sup>th</sup> 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.	)	Champaign County
MICHAEL J. BROOKS,	)	No. 14CF635
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.
	)	

JUSTICE HARRIS delivered the judgment of the court.  
Justices Turner and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed in part as modified to award defendant monetary sentence credit and vacated improperly imposed fines.

¶ 2 In May 2014, the State charged defendant, Michael J. Brooks, by information with aggravated battery of a police officer (count I) (720 ILCS 5/12-3.05(d)(4)(i) (West 2014)), stalking (count II) (720 ILCS 5/12-7.3(a) (West 2014)) and obstructing justice (count III) (720 ILCS 5/31-4(a) (West 2014)). Defendant pleaded guilty to counts II and III and was sentenced to consecutive sentences of six years' imprisonment for count II and three years' imprisonment for count III. Defendant filed a motion to withdraw his guilty plea, or alternatively, a motion to reconsider the sentence, which was denied. This appeal followed.

¶ 3 I. BACKGROUND

¶ 4 In May 2014, the State charged defendant by information with aggravated battery

of a police officer (count I) (720 ILCS 5/12-3.05(d)(4)(i) (West 2014)) and stalking (count II) (720 ILCS 5/12-7.3(a) (West 2014)). The State filed an additional count charging defendant with obstructing justice (count III) (720 ILCS 5/31-4(a) (West 2014)) and defendant entered an open plea of guilty to counts II and III. Count I was dismissed as part of the plea agreement. In July 2014, the trial court sentenced defendant to consecutive terms of six years' imprisonment for count II and three years' imprisonment for count III. In the written sentencing judgment, the court credited defendant for 59 days served in presentence detention. The court also ordered various fines and fees, including, among others, the Spinal Cord Injury Paralysis Cure Research Trust Fund (spinal cord injury fund) assessment (730 ILCS 5/5-9-1.1(c) (West 2014)) and the Trauma Center Fund (trauma fund) assessment (730 ILCS 5/5-9-1.1(b) (West 2014)). Defendant filed a motion to withdraw his guilty plea or, alternatively, a motion to reconsider the sentence, which was denied. This appeal followed.

¶ 5

## II. ANALYSIS

¶ 6 On appeal, defendant argues (1) the spinal cord injury fund assessment and the trauma fund assessment were imposed without statutory authorization, and (2) he was denied a \$5-per-day credit for 59 days of presentence detention. The State concedes the first issue but argues defendant is entitled to only 58 days of monetary credit because "the day of sentencing is not a day of presentence credit."

¶ 7

### A. Fines and Fees

¶ 8 Defendant argues, and the State concedes, the spinal cord injury fund assessment (730 ILCS 5/5-9-1.1(c) (West 2014)) and the trauma fund assessment (730 ILCS 5/5-9-1.1(b) (West 2014)) were improperly imposed. These two assessments are authorized only in cases involving possession or delivery of cannabis or a controlled substance. 730 ILCS 5/5-9-1.1

(West 2014). Defendant pleaded guilty to stalking and obstructing justice. As a result, the trial court was without statutory authority to impose either assessment. We therefore vacate the spinal cord injury fund assessment and the trauma fund assessment.

¶ 9 **B. Monetary Credit**

¶ 10 Defendant also argues he is entitled to a \$5-per-day credit for 59 days of presentence incarceration and that the court's "order did not award the defendant any credit against any of [the] assessments for the time he spent in pre-sentencing custody." See 725 ILCS 5/110-14 (West 2014). The State argues defendant is entitled to monetary credit, but only for 58 days' presentence incarceration because the "day of sentencing is not a day of presentence credit."

¶ 11 The trial court, in its oral pronouncement of sentence and its written sentencing judgment, found defendant was entitled to credit for 59 days served in presentence custody. As a result, defendant is entitled to a \$295 credit against applicable fines and fees. 725 ILCS 5/110-14(a) (West 2014) ("Any person incarcerated on aailable 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."). The State argues defendant is entitled to one less day of sentence credit and asks us to adjust the monetary credit to correct for the trial court's mistake. This we cannot do. Given that the State did not file a cross-appeal, it may not now attack the judgment below with a view either to enlarge its own rights or to lessen the rights of defendant. *People v. Castleberry*, 2015 IL 116916, ¶ 22, 43 N.E.3d 932. Therefore, we find defendant is entitled to a monetary credit against creditable fines for the 59 days the trial court determined he served in presentence custody.

¶ 12 **III. CONCLUSION**

¶ 13           We vacate the spinal cord injury fund assessment and the trauma fund assessment and find defendant is entitled to a \$295 credit available against creditable fines. We deny the State's request that costs of appeal be assessed against defendant.

¶ 14           Affirmed in part as modified and vacated in part.