

No. 1-13-3183

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. 11 CR 5998
)	
WARDELL MOSELY,)	Honorable
)	Rickey Jones,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* We modify the mittimus to fully credit defendant for days in presentence custody, and correct the fines and fees order. Judgment affirmed in all other respects.

¶ 2 Pursuant to a guilty plea, defendant Wardell Mosely was convicted of armed habitual criminal, two counts of unlawful possession of a weapon by a felon, and possession of cannabis with intent to deliver. On appeal, defendant contends that he is entitled to additional presentence custody credit and challenges certain fines imposed by the trial court. We affirm as modified.

¶ 3 Defendant was charged with one count of armed habitual criminal, two counts of unlawful possession of a weapon by a felon, and one count of possession of cannabis with intent to deliver. On June 14, 2012, Pursuant to a guilty plea, defendant was convicted of all counts and sentenced to seven years' imprisonment on each weapons charge and three years on the possession charge, all four terms to run concurrently. The trial court assessed \$3,743.50 in fines, fees, and costs and credited defendant with 140 days of presentence custody.

¶ 4 Defendant filed a section 2-1401 petition for relief from judgment, which the trial court denied without hearing. Defendant now appeals, contending that he is entitled to additional presentence custody credit, and challenging certain fines assessed by the trial court.

¶ 5 Defendant first argues, and the State agrees, that he is entitled to 160 days of presentence custody credit, instead of the 140 days custody credit the trial court assessed to him. An offender shall be given credit on a determinate sentence for time spent in custody as a result of the offense for which the sentence was imposed. 730 ILCS 5/5-4.5-100(b) (West 2010). When a defendant is held in custody for any part of a day, he is entitled to credit against his sentence for all of that day. *People v. Beachem*, 374 Ill. App. 3d 145, 153 (1st Dist. 2007). Whether a mittimus should be corrected is a question of law we review *de novo*. *People v. Anderson*, 2012 IL App (1st) 103288, ¶ 35. Defendant did not raise this issue in the trial court, but presentence custody credit is “mandatory” and, therefore, “such a claim of error cannot be waived.” *Id.*

¶ 6 At sentencing, defendant's trial counsel erroneously informed the court that defendant had been in custody for 140 days. However, the record indicates that defendant was arrested on March 24, 2011, and that he remained in custody until he prevailed at his source of bond hearing on August 30, 2011. Both parties agree that defendant is therefore entitled to 160 days of

presentence custody credit. Accordingly, we direct the clerk of the circuit court to correct defendant's mittimus to reflect 160 days of presentence custody credit.

¶ 7 Defendant next argues that he was assessed an incorrect controlled substances fine, resulting in a miscalculation of the Violent Crime Victims Assistance (VCVA) Act (725 ILCS 240/1, et. seq. (West Supp. 2011)) fine assessed against him. We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 8 We note that the pre-printed order assessing fines and fees lists a controlled substances fine and a cannabis fine, both fines having payment tiers that are identical. The trial court assessed a \$3,000 controlled substances fine against defendant. As defendant was convicted of a cannabis charge, we hold that defendant should have been assessed the cannabis fine instead of the controlled substances fine.

¶ 9 The statute authorizing cannabis fines reserves \$3,000 fines for Class X cannabis convictions. 720 ILCS 550/10.3(a)(1) (West 2010). Defendant was convicted of Class 4 possession of cannabis with intent to deliver (720 ILCS 550/5(c) (West 2010)). The appropriate fine for a Class 4 cannabis conviction is \$500. 720 ILCS 550/10.3(a)(4) (West 2010). Therefore, defendant should have been assessed a \$500 fine instead of a \$3,000 fine. The State agrees with this assessment. Accordingly, we reduce defendant's controlled substances fine to \$500.

¶ 10 Defendant next argues, and the State correctly concedes, his VCVA fine must be recalculated based on the reduction in his cannabis fine. Under the VCVA, a defendant convicted of a felony is to be assessed a penalty equal to \$4 for every \$40 dollars of all other fines charged against him. 725 ILCS 240/10(b) (West Supp. 2011). The trial court assessed a \$304.50 VCVA fine against defendant. This amount was calculated by adding the \$10 mental health court fine, the \$5 youth diversion/peer court fine, \$30 children's advocacy fine, and the \$3,000 controlled

substances fine together (\$3,045), dividing this amount by 40 (\$76.12), and multiplying that amount by 4 (\$304.50). However, because defendant should have been assessed a lower cannabis fine, his fines totaled \$545, not \$3,045, and the VCVA fine should be reduced to \$54.50 ($(\$545/40) \times 4$). Accordingly, we reduce the VCVA fine assessed against defendant from \$304.50 to \$54.50.

¶ 11 Finally, defendant argues, and the State correctly concedes, that he is entitled to \$5 per day pre-sentence incarceration credit toward the \$10 mental health court fine, the \$5 youth diversion/peer court fine, \$30 children's advocacy fine, and \$500 controlled substances fine assessed against him. 725 ILCS 5/110-14(a) (West 2010). As defendant is entitled to \$800 credit for his 160 days of presentence custody, these fines (totaling \$545) are completely offset by defendant's presentence credit.

¶ 12 For the foregoing reasons, we modify defendant's mittimus to reflect 160 days or presentence credit, reduce defendant's controlled substances fee from \$3,000 to \$500, and reduce his VCVA fine from \$304.50 to \$54.50. Further, defendant's \$10 mental health court fine, the \$5 youth diversion/peer court fine, \$30 children's advocacy fine, and \$500 controlled substance fine are offset by his presentence credit. Pursuant to Illinois Supreme Court Rule 615(b)(1), we order the clerk of the circuit court to correct the mittimus and fines and fees order accordingly. We affirm the judgment in all other respects.

¶ 13 Affirmed as modified.