

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).

2017 IL App (4th) 140908-U

NO. 4-14-0908

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 25, 2017

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
VICTOR R. CUNNINGHAM,)	No. 14CF161
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court vacated fines improperly imposed by the circuit clerk; reversed and remanded with directions for the trial court to reimpose fines originally ordered by the trial court, which were not properly stated on the circuit court clerk's printout of assessments, and to amend the resentencing judgment to reflect sentence credit to defendant's domestic violence fine for custody from March 19, 2014, through September 2, 2014; and otherwise affirmed.
- ¶ 2 In March 2014, defendant, Victor R. Cunningham, pleaded guilty to domestic battery with four prior domestic battery convictions, a Class 2 felony (720 ILCS 5/12-3.2(a)(1)(b) (West 2014)), and the trial court sentenced him to 24 months' probation. In September 2014, the trial court revoked defendant's probation and resentenced him to four years' imprisonment and four years' mandatory supervised release. Defendant appeals to vacate fines imposed by the circuit clerk and to remand for an amended sentencing order providing additional

sentence credit. On appeal, defendant argues (1) the circuit clerk improperly imposed fines without trial court authorization, (2) he is entitled to additional sentencing credit following his arrest for time he argues he was in simultaneous custody, and (3) he is entitled to \$5 per day of credit for time served to be applied toward his domestic violence fines.

¶ 3 We vacate the fines entered by the circuit clerk without trial court authorization. We affirm the \$20 State's Attorney assessment as properly imposed by the circuit clerk. We reverse the trial court in not applying sentence credit for his custody following his violations of a protective order toward defendant's domestic violence fine, and we remand with directions to apply additional sentence credit to the domestic violence fine in this case. We remand with directions for the trial court to reimpose fines ordered by the trial court, which were not properly stated on the circuit court clerk's printout of assessments, and to amend the resentencing judgment to reflect sentence credit toward defendant's domestic violence fine for custody from March 19, 2014, through September 2, 2014. We otherwise affirm.

¶ 4 I. BACKGROUND

¶ 5 Decatur police arrested defendant for striking his spouse in the face on January 31, 2014. The State charged defendant with domestic battery with four prior domestic battery convictions (720 ILCS 5/12-3.2(a)(1)(b) (West 2014)) in Macon County case No. 14-CF-161. Defendant remained in custody after his arrest, and on February 27, 2014, his spouse obtained an emergency order of protection against him in case No. 14-OP-68. On March 3, 2014, defendant entered a plea agreement, and the trial court sentenced defendant to 24 months' probation and three days' incarceration, and it ordered payment of a \$200 domestic violence fine (730 ILCS 5/5-9-1.5 (West 2014)), a \$10 domestic battery fine (730 ILCS 5/5-9-1.6 (West 2014)), a monthly probation services fee of \$25 (730 ILCS 5/5-6-3(b)(2) (West 2014)), and court costs.

The trial court credited defendant's three-day jail term and \$160 of his fines from 32 days of sentence credit for his custody from January 31, 2014, through March 3, 2014. The State agreed to forego petitions to revoke defendant's conditional discharge in case Nos. 13-CF-830 and 13-TR-3558, and defendant was released on probation.

¶ 6 Defendant's payment status information report states the domestic battery fine is \$9 and does not reference the \$200 domestic violence fine imposed by the trial court. The payment status information report included the following assessments: \$12 clerk op add-on and \$0.25 clerk op deduction (clerk operations and administrative fund), \$15 State Police operations and \$10 State Police services (State Police operations and services fund), \$20 State's Attorney, \$4.75 drug court, \$5 youth diversion, \$28.50 children's advocacy center fee, \$9.50 nonstandard (mental-health court), \$10 medical costs, \$10 anti-crime fund, \$20 lump-sum surcharge, \$50 court finance, \$100 violent crime (violent crime victims assistance), \$40 domestic violence shelter restitution services, and \$248.10 SA collections.

¶ 7 In March 2014, defendant was arraigned for unlawful violation of an order of protection, case No. 14-CF-301, following his arrest for calling his spouse on March 12, 2014. His arraignment led the State to file its first petition charging a violation of probation on March 19, 2014. He was again arrested after calling his spouse from the Macon County jail on March 27, 2014. On April 4, 2014, the State filed an information charging defendant with unlawful violation of an order of protection with a prior domestic battery conviction, No. 14-CF-370. On April 4, 2014, the State filed a second petition charging a violation of probation for defendant's second order of protection violation. In June 2014, the State withdrew its first petition and proved the allegations in its second petition by a preponderance of the evidence.

¶ 8 In September 2014, the trial court terminated defendant's probation and vacated his monthly probation services fees at a sentencing hearing. The court resentenced defendant to a four-year prison term, followed by four years of mandatory supervised release. The trial court credited defendant for time in custody from January 31, 2014, through March 3, 2014. The court granted the State's motion to dismiss case Nos. 14-CF-301 and 14-CF-370. The briefs of both parties indicate defendant has been released on mandatory supervised release. In November 2014, this court allowed defendant leave to file a late notice of appeal from the revocation of his probation and resentencing.

¶ 9 II. ANALYSIS

¶ 10 A. Defendant's Fines

¶ 11 Defendant argues the circuit clerk imposed additional fines to the sentence issued by the trial court. Circuit clerks may impose statutorily authorized fees and collect on specific fines imposed by court order. *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 18, 63, 18 N.E.3d 912. The imposition of fines is an exclusively judicial act and outside the authority of circuit clerks. *Id.* ¶ 18 (citing *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959). Fines imposed by circuit clerks are void and within the jurisdiction of the appellate court to review. *People v. Gutierrez*, 2012 IL 111590, ¶ 14, 962 N.E.2d 437. The abolition of the "void sentence rule" does not preclude appellate jurisdiction over fines imposed by circuit clerks. *People v. Daily*, 2016 IL App (4th) 150588, ¶¶ 28, 29. Alleged imposition of improper fines or fees presents a question of law, which we review *de novo*. *Id.* ¶27.

¶ 12 The circuit clerk lacked authority to impose additional fines to the \$200 domestic violence fine (730 ILCS 5/5-9-1.5 (West 2014)) and the \$10 domestic battery fine (730 ILCS 5/5-9-1.6 (West 2014)) specified by the trial court. The trial court's order providing for "court

costs" imposed no additional fines on defendant. See *People v. Warren*, 2016 IL App (4th) 120721-B ¶ 89, 55 N.E.3d 117 (stating "when the trial court ordered defendant to 'pay all fines, fees, and costs as authorized by statute,' it improperly delegated its power to impose a sentence to the circuit clerk"). The circuit clerk could only impose statutorily authorized fees additional to the \$200 domestic violence fine and the \$10 domestic battery fine. *Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Conversely the circuit clerk must impose the fines ordered by the trial court.

¶ 13 Authority to impose an assessment and whether an assessment is a fee or a fine are issues of statutory construction. *Warren*, 2016 IL App (4th) 120721-B, ¶ 99, 55 N.E.3d 117. We aim to effectuate the legislature's intent according to the plain and ordinary meaning of the statutory language and will apply plain and unambiguous statutory language as written. *Id.* The supreme court, nonetheless, has found an assessment "labeled a fee by the legislature may be a fine, notwithstanding the words actually used by the legislature." *People v. Graves*, 235 Ill. 2d 244, 250, 919 N.E.2d 906, 910 (2009). A fee is not part of a sentence, but rather an assessment intended to provide reimbursement for costs incurred by the State or money spent in prosecution and conviction. *Id.* at 250, 919 N.E.2d at 909. A fine is a pecuniary part of a sentence and "punitive in nature." *Id.*

¶ 14 Defendant claims error in the circuit clerk's imposition of the following fines: (1) \$12 "Clerk Op Add-on," (2) \$0.25 "Clerk Op Deduction," (3) \$15 State Police operations assessment, (4) \$20 State's Attorney assessment, (5) \$4.75 drug court assessment, (6) \$5 youth diversion fee, (7) \$28.50 child advocacy center fee, (8) \$9.50 nonstandard fee, (9) \$10 medical costs fee, (10) \$10 anti-crime fund assessment, (11) \$20 lump-sum surcharge assessment, (12) \$50 court finance assessment, (13) \$100 violent crime victims assistance assessment, (14) \$40

domestic violence shelter restitution services assessment, (15) \$10 State Police services assessment, and (16) \$248.10 "SA Collections" assessment.

¶ 15 The State agrees the cause should not be remanded for the trial court to impose fines herein entered by the circuit clerk. However, we note the printout from the circuit clerk's office fails to include the \$200 domestic violence fine ordered by the trial court, and it inaccurately states the domestic battery fine is \$9, instead of \$10, as ordered by the trial court. Both defendant and the State note this court can correct the domestic battery fine to be \$10. The record shows the trial court acted within its jurisdiction to impose the domestic violence and domestic battery fines. We therefore remand for the reimposition of the domestic violence and domestic battery fines to reflect the order of the trial court. See *People v. Castleberry*, 2015 IL 116916, ¶ 18, 43 N.E.3d 932 (Circuit courts have jurisdiction over "all justiciable matters."); see also *People v. Hible*, 2016 IL App (4th) 131096, ¶ 11, 53 N.E.3d 319 (citing Ill. Const. 1970, art. VI, § 9) ("The Illinois Constitution grants original jurisdiction to the circuit courts.")

¶ 16 *1. Clerk Op Add-Ons and Clerk Op Deduction Assessments*

¶ 17 Defendant complains the circuit clerk assessed a \$12 "Clerk Op Add-Ons" and a \$0.25 "Clerk Op Deduction." The statutory basis for these amounts is unclear and we vacate them. See *People v. Williams*, 2013 IL App (4th) 120313, ¶ 19, 991 N.E.2d 914 ("While defendant stated the 'Clerk Op Add-On' assessment was an additional mandatory fine, the State did not request its reimposition, and thus we do not reimpose that assessment as the statutory basis for that charge is unclear."); *People v. Johnson*, 2015 IL App (3d) 140364, ¶ 10, 46 N.E.3d 937 (\$0.25 'Clerk Op Deduction' among the assessments listed as improperly imposed by the circuit clerk).

¶ 18 *2. State Police Operations Assessment*

¶ 19 Defendant objects to the circuit clerk's imposition of the \$15 State Police operations assessment under the Clerk of the Courts Act (705 ILCS 105/27.3a (1.5), (5) (West 2012)). The circuit clerk is without authority to impose this fine. *Williams*, 2013 IL App (4th) 120313, ¶ 18, 991 N.E.2d 914. Therefore, we vacate the \$15 State Police operations assessment.

¶ 20 *3. State's Attorney Assessment*

¶ 21 We decline defendant's request to vacate \$10 of the \$20 State's Attorney assessment as an improperly imposed fine under the juvenile-expungement fund assessment (730 ILCS 5/5-9-1.17(a) (West 2014)). A State's Attorney assessment is authorized under the Counties Code as compensation to State's Attorneys in the prosecutions and convictions of "cases punishable by imprisonment in the penitentiary." 55 ILCS 5/4-2002(a) (West 2014). The record affords no bases for the argument this was an improperly imposed fine under the juvenile-expungement fund. *Cf. Warren*, 2016 IL App (4th) 120721-B, ¶ 134, 55 N.E.3d at 144; see also *Smith*, 2014 IL App (4th) 121118, ¶¶ 39, 61, 18 N.E.3d 912. An assessment pursuant to section 4-2002 of the Counties Code is considered a fee the circuit clerk is authorized to impose. *Larue*, 2014 IL App (4th) 120595, ¶ 72, 10 N.E.3d 959; see also *Smith*, 2014 IL App (4th) 121118, ¶ 38, 18 N.E.3d 912. We affirm the circuit clerk's \$20 State's Attorney assessment.

¶ 22 *4. Drug Court Assessment*

¶ 23 Defendant argues the \$4.75 drug court assessment (55 ILCS 5/5-1101(f) (West 2014)) is an improper fine because he never participated in drug court. We agree. The drug court assessment is considered a fine where a defendant did not participate in drug court. *People v. Rexroad*, 2013 IL App (4th) 110981, ¶ 53, 992 N.E.2d 3. We thus vacate the circuit clerk's \$4.75 drug court assessment.

¶ 24 *5. Youth Diversion and Child Advocacy Center Fees*

¶ 25 The \$5 youth diversion fee under the Counties Code (55 ILCS 5/5-1101(e) (West 2014)) and the \$28.50 children's advocacy center fee (55 ILCS 5/5-1101(f-5) (West 2014)) assessed against defendant are improper fines. This court expressly held, "Because the drug-court and children's-advocacy-center assessments are fines, those assessments cannot be imposed by the circuit clerk." *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E.2d 1128, 1133 (4th Dist. 2010). We vacate the \$5 youth diversion fee and the \$28.50 children's advocacy center fee.

¶ 26 *6. Nonstandard Fee*

¶ 27 The \$9.50 "Nonstandard Fee" imposed by the circuit clerk is a fine. This court previously accepted a stipulation between the State's Attorney and defendant to the nonstandard fee referring to a fine for the mental-health court under section 5-1101(d-5) of the Counties Code. *Williams*, 2013 IL App (4th) 120313, ¶ 19, 991 N.E.2d 914 (citing 55 ILCS 5/5-1101(d-5) (West 2010)). Defendant similarly argues the \$9.50 nonstandard fee refers to an assessment for the mental-health court. The State offers no alternative interpretation of the nonstandard fee assessed by the circuit clerk in this case. An assessment issued under section 5-1101(d-5) of the Counties Code is a fine where it is not compensatory, but punitive in nature. *People v. Sulton*, 395 Ill. App. 3d 186, 191, 916 N.E.2d 642, 646 (4th Dist. 2009). Defendant's nonstandard fee is a fine because it is not compensatory in nature. Defendant did not participate in the mental-health court or any of the services enumerated in section 5-1101(d-5) of the Counties Code. We vacate the \$9.50 nonstandard fee.

¶ 28 *7. Medical Costs Fee*

¶ 29 The \$10 medical costs fee imposed by the circuit clerk pursuant to section 17 of the Unified Code of Corrections (Unified Code) (730 ILCS 125/17 (West 2014)) is considered a fine. *Larue*, 2014 IL App (4th) 120595, ¶ 57, 10 N.E.3d 959. A medical costs fee does not

require a defendant to undergo medical care and, therefore, is not intended to provide reimbursement for a cost incurred by the State. *Id.* The circuit clerk improperly imposed a medical costs assessment against defendant without authorization from the trial court. We vacate the \$10 medical costs fee.

¶ 30 *8. Anti-Crime Fund Assessment*

¶ 31 The \$10 anti-crime fund assessment under the Unified Code (730 ILCS 5/5-6-3(b)(13) (West 2014)) is a fine. *Hible*, 2016 IL App (4th) 131096, ¶ 18, 53 N.E.3d 319.

Therefore, the anti-crime fund assessment may only be imposed by the trial court. *Id.* We vacate defendant's \$10 anti-crime fund assessment because it was imposed by the circuit clerk without authorization from the trial court.

¶ 32 *9. Lump-Sum Surcharge Assessment*

¶ 33 The lump-sum surcharge assessment (730 ILCS 5/5-9-1(c) (West 2014)) is a fine requiring imposition by the trial court. *Hible*, 2016 IL App (4th) 131096, ¶ 23, 53 N.E.3d 319.

The lump-sum surcharge assessment requires the trial court to impose "an additional penalty of \$10 for each \$40, or fraction thereof, of fine imposed." 730 ILCS 5/5-9-1(c) (West 2014).

Defendant points out the trial court should have entered a lump-sum surcharge assessment of \$50, based upon the \$210 in fines properly imposed by the trial court. The trial court did not authorize the circuit clerk to collect a lump-sum surcharge assessment. We vacate the \$20 lump-sum surcharge assessment.

¶ 34 *10. Court-Finance Assessment*

¶ 35 The \$50 court-finance assessment under the Counties Code (55 ILCS 5/5-1101(c) (West 2014)) is an improperly imposed fine. We previously found the court-finance assessment is a fine requiring imposition from the trial court. *Smith*, 2014 IL App (4th) 121118, ¶ 54, 18

¶ 42 Defendant argues the \$10 State Police services assessment is a fine imposed as part of the juvenile-expungement fund under Unified Code (730 ILCS 5/5-9-1.17(a) (West 2014)). We vacate this assessment.

¶ 43 14. "SA Collections" Assessment

¶ 44 Defendant alleges the \$248.10 "SA Collections" assessment refers to "late fees based on fines imposed." A circuit clerk is statutorily authorized to provide an additional assessment "equal to 5% of the unpaid fines, costs, fees, and penalties that remain unpaid after 30 days, 10% of the unpaid fines, costs, fees, and penalties that remain unpaid 60 days, and 15% of the unpaid fines, costs, fees, and penalties that remain unpaid after 90 days." 725 ILCS 5/124A-10 (West 2014). We previously vacated late fees and collection fees where, as in this case, "many of the fines were not judicially imposed." *Smith*, 2014 IL App (4th) 121118, ¶ 88, 18 N.E.3d 912. We vacate the \$248.10 SA collections assessment.

¶ 45 B. Sentence Credit

¶ 46 Defendant argues he is entitled to an additional 168 days' sentence credit for custody from March 19, 2014, through September 2, 2014. Defendant claims additional sentence credit for 168 days in custody between the State's filing of the first petition to revoke on March 19, 2014, and his resentencing on September 2, 2014. Defendant's brief alleges he was in simultaneous custody for violations of probation and his arrests under case Nos. 14-CF-301 and 14-CF-370. The State argues defendant provided an insufficient record to demonstrate custody and calculate the amount of \$5 per day incarceration credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/110-14(a) (West 2014)). According to the State's brief, defendant relied solely on his own testimony to assert he was

arrested and remained in custody from his first arrest on March 12, 2014. We agree with defendant.

¶ 47 Whether a defendant is entitled to credit for presentence custody presents a question of law, which we review *de novo*. *People v. Clark*, 2014 IL App (4th) 130331, ¶ 15, 15 N.E.3d 539.

¶ 48 "[I]t is appellant's duty to provide a complete record on appeal, and doubts arising from incompleteness of the record are resolved against appellant." *People v. Foster*, 199 Ill. App. 3d 372, 393, 556 N.E.2d 1289, 1303 (4th Dist. 1990). The record includes testimony elicited by the State from Decatur police officer Joseph Duncan, who testified defendant was arrested on March 12, 2014 for unlawful violation of an order of protection, case No. 14-CF-301. The testimony of Officer Andrew Wittmer identifies defendant by his jail uniform and indicates defendant had violated an order of protection while incarcerated on March 27, 2014, case No. 14-CF-370. Defendant's presentence investigation report prior to resentencing did not indicate a release from custody or arrests for additional offenses. The record does not indicate defendant posted bail or was released from custody following his arrest for an order of protection violation on March 12, 2014.

¶ 49 Section 5-4.5-100(b) of the Unified Code states, "[An] offender shall be given credit on the determinate sentence *** of imprisonment for the number of days 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 2014). Sentence credit may not be allocated for custody on an unrelated offense. *People v. Woznick*, 209 Ill. App. 3d 1061, 1063, 568 N.E.2d 425, 426 (1991). Both petitions charging a violation of probation refer to case Nos. 14-CF-301 and 14-CF-370. The State argued defendant violated an order of protection on March 12 and March 27 at the hearing to revoke

defendant's probation and informed the court of its "intention is to dismiss [case Nos. 14-CF-301 and 14-CF-370] pursuant to the [re]sentence in this case." The trial court granted the State's second petition to revoke upon finding defendant violated an order of protection by the preponderance of the evidence.

¶ 50 C. Monetary Sentence Credit Against Fines

¶ 51 Defendant may receive sentence credit of \$5 per day applied to his domestic violence fine (730 ILCS 5/5-9-1.5 (West 2014)) under section 110-14 of the Criminal Procedure Code (725 ILCS 5/110-14 (West 2014)). The trial court must continue its imposition of fines from the original sentence at resentencing for defendant to receive sentence credit under this provision. *People v. Watson*, 318 Ill. App. 3d 140, 144, 743 N.E.2d 147, 150 (4th Dist. 2000). The trial court vacated only "incurring Probation Services Fees" and made no indication of vacating any other fines at defendant's resentencing hearing. We note, however, defendant is not entitled to a \$5 per day sentence credit to his domestic battery fine (730 ILCS 5/5-9-1.6 (West 2014)). The Unified Code states the domestic battery fine "shall not be considered a part of the fine for purposes of any reduction in the fine for time served either before or after sentencing." 730 ILCS 5/5-9-1.6 (West 2014). Therefore, defendant must pay the domestic battery fine and can only receive available sentence credit to his domestic violence fine.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we vacate the following assessments: \$12 clerk op add-ons, \$0.25 clerk op deduction, \$15 State Police operations, \$4.75 drug court, \$5 youth diversion fee, \$28.50 children's advocacy center fee, \$9.50 nonstandard fee, \$10 medical costs fee, \$10 anti-crime fund, \$20 lump-sum surcharge, \$50 court finance, \$100 violent crime victims assistance, \$40 domestic violence shelter restitution services, \$10 State Police services, and

\$248.10 SA collections. We affirm the \$20 State's Attorney assessment. We otherwise affirm and remand with directions to reimpose the fines ordered by the trial court, which were not properly included in the printout from the circuit clerk, and to amend the sentencing judgment of 168 days to accord \$5 per day sentence credit for custody from March 19, 2014, through September 2, 2014, to the remaining \$40 on his only creditable fine, the domestic violence fine.

¶ 54 Affirmed in part as modified and vacated in part; cause remanded with directions.