

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) 150068-U

NO. 4-15-0068

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 7, 2017

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JENNIFER L. BONER,)	No. 13CF309
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court held (1) defendant is entitled to a partial refund of her probation fee and (2) defendant is entitled to \$40 in monetary presentence credit against her creditable fines.

¶ 2 In February 2014, defendant, Jennifer L. Boner, pleaded guilty to the offense of unlawful failure to register as a sex offender (730 ILCS 150/3 (West 2012)). Pursuant to a plea agreement, the trial court sentenced defendant to 24 months of probation, including conditions that she serve 90 days of jail time (stayed upon successful completion of 90 days of home confinement) and pay a probation fee of \$25 per month. The court awarded defendant \$10 in presentence credit against her creditable fines. In August 2014, the State filed a petition to revoke defendant's probation and argued, among other things, defendant violated her probation when she committed the offense of resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)).

¶ 3 In October 2014, the trial court granted the State's petition. In November 2014, the court resentenced defendant to a prison term of 30 months and 1 year of mandatory supervised release. Defendant appeals, arguing she is entitled to (1) a partial refund of the \$575 probation fee she paid and (2) \$920 in presentence credit against her creditable fines. For the reasons that follow, we affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On December 6, 2013, defendant was charged by information with unlawful failure to register as a sex offender (730 ILCS 150/3 (West 2012)). On February 3, 2014, defendant pleaded guilty pursuant to a plea agreement. Pursuant to the plea agreement, the State recommended a sentence of 24 months of probation, including conditions that defendant serve 90 days of jail time (stayed upon successful completion of 90 days of home confinement). The trial court accepted the plea agreement and sentenced defendant accordingly. The court ordered defendant to pay various fines and fees, including a probation fee of \$25 per month. The judgment reflects a total probation fee of \$575. The court awarded defendant \$10 of presentence credit against her creditable fines.

¶ 6 A. February 2014 Petition To Revoke Probation

¶ 7 On February 18, 2014, the State filed a petition to revoke defendant's probation based on an alleged violation of her probation and home confinement when she had an unapproved visitor at her residence. On February 24, 2014, the trial court found defendant in violation of her probation and lifted the stay on defendant's jail sentence. The court ordered defendant to serve 90 days in jail, with credit for 7 days previously served.

¶ 8 B. May 2014 Petition To Revoke Probation

¶ 9 On May 12, 2014, the State filed another petition to revoke defendant's probation based on alleged violations of her probation and home confinement when she was not present at her residence on May 9, 2014. On June 18, 2014, defendant failed to appear for a hearing on the State's petition to revoke probation and the trial court issued a warrant for her arrest. Defendant was later arrested.

¶ 10 On July 14, 2014, while the State's petition to revoke was pending, defendant requested release on a personal recognizance bond with conditions that included home confinement. The trial court granted defendant's request.

¶ 11 On August 15, 2014, defendant paid in full all outstanding fines and fees in this case, including \$575 for the probation fee, representing the entire anticipated term of 24 months.

¶ 12 On September 3, 2014, the trial court denied the State's May 2014 petition to revoke probation.

¶ 13 C. August 2014 Supplemental Petition To Revoke Probation

¶ 14 On August 27, 2014, the State filed a supplemental petition to revoke defendant's probation based on alleged violations of her probation when she (1) had an unapproved visitor at her residence on August 15, 2014; and (2) committed the offense of resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)).

¶ 15 On October 1, 2014, and October 3, 2014, the trial court heard testimony on the State's August 2014 supplemental petition. The testimony established that on August 15, 2014, an unapproved visitor was at defendant's residence in violation of her probation and home confinement orders. When officers arrived at defendant's residence to arrest her for the alleged probation violation, she refused to cooperate and physically resisted the officers in their attempt to arrest her.

¶ 16 The trial court found, by a preponderance of the evidence, defendant had violated the terms of her probation by committing the offense of resisting a peace officer (*id.*).

¶ 17 On November 10, 2014, the trial court revoked defendant's probation and resentenced her to 30 months in prison, with credit for 184 days served. On November 13, 2014, defendant filed a motion to reconsider the sentence. On January 26, 2015, the court denied the motion.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant contends she is entitled to (1) a partial refund of the \$575 probation fee she paid and (2) \$920 in presentence credit against her creditable fines. The State argues (1) this court lacks jurisdiction to entertain defendant's request for a partial refund of her probation fee and (2) defendant is not entitled to additional presentence credit because the trial court did not levy a fine at her resentencing hearing.

¶ 21 A. Probation Fee

¶ 22 Defendant claims she was only actively supervised by probation from March 2014 to August 2014, a period of six months. Therefore, she argues, she should only have been assessed \$150 in probation fees (\$25/month x 6 months), and not the \$575 assessed by the trial court. In the alternative, defendant requests this court remand for further proceedings in which the trial court may determine the period defendant was actively supervised and calculate the appropriate probation fee. In any event, defendant argues she is owed a refund of the portion of the \$575 probation fee representing the period she was not on probation.

¶ 23 The State argues this court lacks jurisdiction to address defendant's request for a partial refund of the probation fee she paid because she failed to appeal the trial court's original

sentencing judgment entered on February 3, 2014. Citing *People v. Speed*, 318 Ill. App. 3d 910, 915, 743 N.E.2d 1084, 1087 (2001), the State contends, "[w]hen the steps set forth in Supreme Court Rules 604 and 606 are not taken and the defendant seeks relief from her conviction only after probation is revoked, the appellate court lacks jurisdiction to review the underlying judgment unless that judgment is void." Defendant responds, arguing, in part, this court has jurisdiction because the trial court continued her financial obligations ordered in her original sentence in the resentencing judgment in November 2014 when it stated, "[f]ines, costs, assessments, will all remain as is in the original probation order."

¶ 24 In this case, defendant timely appealed the trial court's November 2014 resentencing judgment. At the resentencing hearing, the court stated, "[f]ines, costs, assessments, will all remain as is in the original probation order." Further, in its written resentencing judgment, the court ordered that "fines and costs previously entered in [this case] will be due 1 year after defendant's release." In light of the court's affirmative act of continuing defendant's fines and fees from the original sentencing judgment, we find we have jurisdiction to consider defendant's request for a partial refund of the probation fee she paid. However, as defendant concedes, she forfeited this issue since she did not properly preserve it for appeal by raising it in the trial court. See *People v. Rathbone*, 345 Ill. App. 3d 305, 308-09, 802 N.E.2d 333, 336 (2003). Nevertheless, defendant argues for plain-error review. The State does not respond to defendant's plain-error argument.

¶ 25 "The plain-error doctrine allows errors not previously challenged to be considered on appeal if either: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial

process, regardless of the closeness of the evidence." *People v. Wilmington*, 2013 IL 112938, ¶ 31, 983 N.E.2d 1015. The defendant bears the burden of persuasion under both prongs of the plain-error test. *People v. Naylor*, 229 Ill. 2d 584, 593, 893 N.E.2d 653, 659 (2008). We first consider whether error occurred. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010).

¶ 26 Defendant argues the trial court erred in its resentencing judgment when it ordered her probation fee to continue for the entire term of probation previously ordered (24 months) when, at the same time, it ordered her probation revoked.

¶ 27 Section 5-6-3(i) of the Unified Code of Corrections (730 ILCS 5/5-6-3(i) (West 2012)) provides a probation fee "shall be imposed only upon an offender who is actively supervised by the probation and court services department." Section 5-6-3(i) further provides, "A circuit court may not impose a probation fee under this subsection (i) in excess of \$25 per month unless the circuit court has adopted, by administrative order issued by the chief judge, a standard probation fee guide determining an offender's ability to pay ***." *Id.*

¶ 28 In this case, the trial court's original sentencing judgment indicates the court (1) sentenced defendant to 24 months of probation beginning on February 3, 2014; and (2) ordered defendant to pay a probation fee \$25 per month beginning on March 3, 2014, totaling \$575 (\$25 x 23 months) for the entire term of probation. It is clear the probation department did not actively supervise defendant during the entire term to which the court sentenced her to probation. Therefore, we agree the court erred when it continued the original "fines, costs, and assessments" in its resentencing of defendant, when the probation fee assessment should have terminated at the time her probation was revoked.

¶ 29 Defendant argues the second prong of plain-error review applies because the issue involves one of fundamental fairness and the integrity of the judicial process. Citing *People v. Lewis*, 234 Ill. 2d 32, 48-49, 912 N.E.2d 1220, 1230 (2009), defendant argues any error, even if it only involves a relatively small amount of money, may still affect the integrity of the judicial process and the fairness of the proceeding such that it constitutes "plain-error" if the controversy is determined in an arbitrary or unreasonable manner. We agree.

¶ 30 Section 5-6-3(i) of the Unified Code of Corrections states a circuit court may not, absent special circumstances not relevant here, impose a probation fee in excess of \$25 per month (730 ILCS 5/5-6-3(i) (West 2012)). The trial court's original sentencing judgment required defendant to pay \$25 per month, a requirement it incorporated into its resentencing judgment. Here, the court continued the original probation fee assessment in its resentencing judgment and, at the same time, revoked defendant's probation. Accordingly, we find the court's actions constitute plain error as the error challenges the integrity of the judicial process and the fairness of defendant's resentencing hearing. See *Lewis*, 234 Ill. 2d at 48, 912 N.E.2d at 1230 (noting "[a]n error may involve a relatively small amount of money or unimportant matter, but still affect the integrity of the judicial process and the fairness of the proceeding if the controversy is determined in an arbitrary or unreasoned manner").

¶ 31 Nevertheless, the State argues, defendant paid the entirety of her fines and fees on August 15, 2014, including the probation fee assessment for the total amount of \$575, and she cannot complain since she did not object to the assessment at that time (citing *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 79, 996 N.E.2d 1227 ("invited errors are not subject to plain-error review")). Initially, we note defendant paid her fines and fees *prior* to having her probation revoked. Therefore, she had no reason to complain at the time of her payment. Further, to find

invited error under these circumstances would be contrary to public policy as it would discourage offenders from paying their financial obligations to the court.

¶ 32 Here, defendant is entitled to a partial refund of the \$575 she paid for her probation services. She requests this court to (1) vacate the \$575 probation fee and enter an order for a \$150 probation fee representing six months of supervision or (2) remand for further proceedings for the trial court to determine how long the probation department actively supervised her and recalculate the probation fee accordingly. We find the record does not conclusively establish the period in which probation services actively supervised defendant. Without sufficient evidence in the record, we are unable to determine the proper total probation fee assessment or the amount defendant should be refunded. Thus, we remand the matter for the trial court to determine the period defendant was actively supervised and for a recalculation of the probation fee. The circuit clerk shall issue defendant a refund for any overpayment of her probation fee depending on the court's new calculation.

¶ 33 B. Presentence Credit

¶ 34 Next, defendant argues she is entitled to \$920 in presentence credit against her creditable fines. More specifically, defendant suggests because the trial court awarded her 184 days of credit against her sentence for time served in its resentencing judgment, she is entitled to a monetary credit of \$920 (184 days x \$5). The State responds defendant is not entitled to additional monetary credit for days she was incarcerated after February 3, 2014, the date of her original sentencing. Alternatively, the State argues defendant's monetary credit calculation is incorrect because it includes 45 days she spent in jail as a condition of probation and not on a bailable offense.

¶ 35 Section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure Code) provides, in relevant part, as follows:

"Any person incarcerated on a bailable 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. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110-14(a) (West 2014).

¶ 36 The State contends the trial court did not levy a fine as part of its resentencing judgment, and therefore, defendant is not entitled to additional presentence credit. Citing *People v. Watson*, 318 Ill. App 3d 140, 144, 743 N.E.2d 147, 150 (2000), defendant argues that when a trial court continues a fine at the time of resentencing, the defendant is entitled to receive monetary presentence credit against that fine. In *Watson*, this court stated, "[s]entencing upon revocation of probation is sentencing upon a conviction and is within the purview of section 110-14 of the Procedure Code." *Id.* The court continued, "[u]pon revocation of defendant's probation, the court ordered the \$200 fine to continue. As such, defendant is entitled to credit for any time served up until the sentence and fine are imposed." *Id.* Applying the same reasoning here, defendant is entitled to presentence credit against the fines continued by the trial court in its resentencing judgment. However, we agree with the State that defendant is not entitled to presentence credit for the 45 days she spent in jail as a condition of probation. Therefore, we find defendant is entitled to presentence credit for 139 days (184 days - 45 days = 139 days).

¶ 37 Notwithstanding our calculation of defendant's presentence credit as reflected above, we note that defendant is not allowed monetary credit in excess of her creditable fines.

As defendant concedes in her brief, she was only assessed \$40 in creditable fines: \$10 clerk operations; \$20 child advocacy fee; and \$10 toward state police services. As such, defendant is only entitled to \$40 in monetary presentence credit. The record indicates defendant paid the above fines in full on August 14, 2014. At the time defendant made her payment, she had been awarded \$10 in monetary credit pursuant to the trial court's original sentencing judgment. Therefore, we remand to the trial court for the purpose of amending the written resentencing judgment to reflect defendant is entitled to \$40 in monetary presentence credit and direct the circuit clerk to issue her a refund in the amount of \$30.

¶ 38

III. CONCLUSION

¶ 39 For the reasons stated, we affirm in part, vacate in part, and remand with directions. We vacate the probation fee for the period following defendant's probation revocation with directions for the trial court to (1) impose a probation fee reflecting the period of time defendant was actively supervised by the probation department, (2) award defendant \$40 in monetary presentence credit against her creditable fines, and (3) direct the circuit clerk to issue defendant a refund based on these new calculations. We otherwise affirm.

¶ 40

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