

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).

FILED
January 23, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160155-U

NO. 4-16-0155

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
JOSHUA C. COUNCIL,)	No. 12CF463
Defendant-Appellant.)	
)	Honorable
)	Mitchell K. Shick,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated the fines improperly imposed by the circuit clerk and remanded for the award of appropriate *per diem* credit against applicable fines.

¶ 2 Defendant, Joshua C. Council, appeals from his sentence imposed upon the revocation of his probation. He contends (1) the circuit clerk improperly imposed various fines and (2) he is entitled to *per diem* credit for time spent in presentencing custody. The State concedes the errors regarding the clerk’s imposition of fines and defendant’s entitlement to some credit, while disputing his entitlement to the full credit claimed. We vacate the fines imposed by the circuit clerk and remand for the application of *per diem* credit.

¶ 3 I. BACKGROUND

¶ 4 The only issues on appeal relate to the imposition of fines, fees, and costs and defendant's entitlement to the corresponding credit for time served. Thus, we will only summarize the necessary information from the trial court proceedings for context.

¶ 5 In December 2012, defendant was charged with three counts of aggravated battery (720 ILCS 5/12-3.05(a)(1), (d)(1), (f)(1) (West 2012)) and one count of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2012)). In exchange for the State's dismissal of the remaining charges, defendant agreed to plead guilty to one count of aggravated battery. In August 2013, the trial court sentenced him to two years' probation and assessed various fines. For the next two years, defendant was in and out of custody on multiple probation violations.

¶ 6 Upon the latest finding of a probation violation, in November 2015, the trial court resentenced defendant to five years in prison and "resentence[d] him to the fines, costs, and fees owed or previously imposed" with credit for 451 days of time spent in presentencing custody. The fines, costs, and fees imposed by the court consisted of the following: (1) \$25 per month for probation supervision; (2) a \$1,200 mandatory fine; (3) a \$100 violent crime; (4) a \$5 drug-court fine; (5) a \$200 domestic-violence fine; and (6) a \$108 extradition fee. The fines and fees sheet appearing in the record before us provides for the following fines imposed by the circuit clerk: (1) a \$50 "court" fine; (2) a \$300 "lump sum surcharge"; (3) \$10 for "medical costs"; and (4) \$8 for "state police ops."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant claims he is entitled to \$2,255 per diem credit, calculated at \$5 per day for the 451 days he spent in presentencing custody. He claims the \$368 in fines improperly imposed by the circuit clerk should be vacated and subtracted from the \$1,079.25 total set forth

on the fines and fees sheet, leaving him with a balance due of \$711.25. He further claims an additional \$300, which includes the \$200 domestic-violence fine and a \$100 violent-crime-victim-assistance fine (VCVA) imposed by the trial court, should be offset by his *per diem* credit. After vacating the improperly imposed fines and appropriately crediting the other fines, defendant contends he owes \$411.25 in fees and costs.

¶ 10 The State agrees this court should vacate the fines improperly imposed by the circuit clerk totaling \$368 (the \$50 court fine, \$300 lump sum surcharge, \$10 medical costs, and \$8 state police operations fine). The State also concedes the \$200 domestic-violence fine plus the \$5 drug-court fine (not mentioned by defendant) should be offset by defendant's *per diem* credit. However, the State contends section 10(b) of the Violent Crime Victims Assistance Act (Act) (725 ILCS 240/10(b) (West 2014)) prohibits the \$100 VCVA fine from being reduced by *per diem* credit. In support of its position, the State relies on *People v. Lake*, 2015 IL App (3d) 140031, ¶ 36 (holding the defendant's presentence incarceration credit does not apply against the VCVA fine per the Act). In support of his position, defendant relies on *People v. Dickey*, 2011 IL App (3d) 100397, ¶ 32, wherein the Third District stated the fine could be offset. In *Lake*, the Third District expressly found *Dickey* to have been decided in error; concluding instead the \$5-per-day presentence incarceration credit is not applicable to VCVA fines. *Lake*, 2015 IL App (3d) 140031, ¶ 36.

¶ 11 The statutory language of the Act makes clear the VCVA fine is *not* subject to presentence incarceration credit. The *Dickey* court neither addressed nor acknowledged the language in section 10(b) of the Act (725 ILCS 240/10(b) (West 2010)) specifically precluding the application of presentence credit. Given the precise statutory language, we, like the court in *Lake*, refuse to follow *Dickey* and instead, adhere to the legislature's intent of imposing the

assessment as additional punishment not subject to credit for time served. See *Lake*, 2015 IL App (3d) 140031 ¶ 36; *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 142; 725 ILCS 240/10(b) (West 2014).

¶ 12 In sum, we accept the State's concession and vacate the fines imposed by the circuit clerk in the amount of \$368. We also accept the State's concession regarding *per diem* credit. We remand this cause to the trial court with directions to apply defendant's *per diem* credit of \$2,255 to the fines imposed by the court, with the exception of the \$100 VCVA fine—that is, to the creditable fines, leaving defendant with a balance due for fines, fees, and costs in the amount of \$511.25.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, the trial court's judgment is affirmed in part and vacated in part, and the cause is remanded with directions.

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