

**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).

2018 IL App (4th) 160395-UB

NO. 4-16-0395

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 27, 2018

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, )

Plaintiff-Appellee, )

v. )

TERRY W. LEECE, )

Defendant-Appellant. )

) Appeal from

) Circuit Court of

) Coles County

) No. 12CF375

) Honorable

) Teresa K. Righter,

) Judge Presiding.

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JUSTICE DeARMOND delivered the judgment of the court.

Presiding Justice Harris and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirms defendant’s conviction and sentence but remands with directions to calculate the appropriate sentence credit and monetary credit. The court vacates the assessment of fines and duplicate fees levied on defendant by the circuit clerk.

¶ 2 In October 2012, the State charged defendant, Terry W. Leece, by information, in Coles County case No. 12-CF-375, with one count of aggravated robbery (count I) and one count of attempted aggravated robbery (count II), alleging he knowingly took United States currency from a Walgreens employee and attempted to rob a CVS employee by indicating defendant had a gun in a plastic bag. In June 2014, defendant pled guilty. In August 2014, defendant withdrew his plea due to the trial court’s error in admonishing him on count II, the attempted aggravated robbery count, was probationable, which error was the result of misinformation from the attorneys. In January 2015, defendant reentered his plea of guilty and the trial court sentenced

him to concurrent prison terms of 15 years for count I and 6 years for count II, along with fines and court costs. The court provided a sentence credit of 78 days served and a \$390 credit toward fines based on presentence incarceration.

¶ 3 On appeal, defendant argues the trial court incorrectly assessed sentence and monetary credit and the circuit clerk added improper fines. In January 2018, this court affirmed defendant's convictions and sentences but remanded with directions to calculate the appropriate sentence and monetary credit and vacated seven fines. Defendant filed a petition for leave to appeal to the Illinois Supreme Court. In September 2018, the supreme court denied defendant's petition; however, in the exercise of its supervisory authority, it directed this court to vacate our judgment and, in light of *People v. Vara*, 2018 IL 121823, consider whether this court has jurisdiction to address and vacate the clerk-imposed fines in this matter. *People v. Leece*, No. 123325 (Ill. Sept. 26, 2018) (nonprecedential supervisory order on denial of petition for leave to appeal). Accordingly, we vacated our original judgment, and we again affirm defendant's convictions and sentences but remand for a calculation of the appropriate sentence and monetary credit, while not vacating the clerk-imposed fines.

¶ 4 I. BACKGROUND

¶ 5 The State charged defendant with aggravated robbery, a Class 1 felony (720 ILCS 5/18-1(b) (West 2012)), and attempt (aggravated robbery), a Class 2 felony (720 ILCS 5/8-4(a), 5/18-1(b) (West 2012)). He was alleged to have knowingly taken United States currency from a Walgreens employee and attempted to rob a CVS employee, both by indicating he had a handgun concealed in a plastic bag.

¶ 6 Defendant first pled guilty in June 2014, at which time the judge told him count I was nonprobationable but count II was probationable. At the sentencing hearing in August 2014,

the State informed the court counsel's representations at the time of the plea were in error and both counts were nonprobationable. The trial court asked if the defendant wished to withdraw his plea, and the defendant accepted the offer to do so without objection by the State.

¶ 7 Defendant reentered his plea of guilty in January 2015. On count I, the court sentenced defendant to 15 years in prison and imposed a fine of \$3500 plus court costs, a \$100 violent crime victims' assistance (VCVA) fine, a \$5 drug court fine, and a \$30 court-appointed special advocate (CASA) fee. On count II, the court sentenced defendant to six years in prison, served concurrently with count I, and imposed a \$100 VCVA fine, a \$5 drug court fine, and court costs. The trial court provided a sentence credit of 78 days served and a \$390 credit toward creditable fines based on presentence incarceration. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 A. Sentence Credit

¶ 10 Defendant argues he is entitled to 80 additional days of sentence credit in this case for his time spent in custody before and after his hearing for a revocation of a mandatory supervised release (MSR) in Champaign County case Nos. 08-CF-1604, 08-CF-1605, 08-CF-1606, 08-CF-1607, 08-CF-1607, and 08-CF-1608. We disagree.

¶ 11 A defendant "shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012).

"An offender charged with the commission of an offense committed while on parole, mandatory supervised release, or probation shall not be given credit for time spent in custody under subsection (b) for that offense for any time spent in custody as a

result of a revocation of parole, mandatory supervised release, or probation where such revocation is based on a sentence imposed for a previous conviction regardless of the facts upon which the revocation of parole, mandatory supervised release, or probation is based[.]” 730 ILCS 5/5-4.5-100(e) (West 2012).

¶ 12 Defendant argues, according to his interpretation of section 5-4.5-100(e) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-100(e) (West 2012)), he is entitled to sentence credit for time spent in custody herein before his MSR revocation hearing, while he was in custody awaiting the hearing, and while in custody after serving his term for the MSR revocation for the aggravated robbery charges in this case, which were the bases for the revocation hearing. Defendant argues the language “time spent in custody as a result of a revocation of parole [or] mandatory supervised release” refers to time spent in custody after the revocation hearing of an MSR. The State argues defendant is not entitled to any credit for time when he was in custody on the “parole hold” or incarcerated for the revocation of MSR. As this is a question of statutory construction, our review is *de novo*. *People v. Williams*, 239 Ill. 2d 503, 506, 942 N.E.2d 1257, 1260 (2011) (citing *People v. Robinson*, 172 Ill. 2d 452, 457, 667 N.E.2d 1305, 1307 (1996)).

¶ 13 “This court’s primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the legislature.” *Williams*, 239 Ill. 2d at 506 (citing *People v. Zaremba*, 158 Ill. 2d 36, 40, 630 N.E.2d 797, 799 (1994)). “The most reliable indicator of legislative intent is the language of the statute itself.” *Williams*, 239 Ill. 2d at 506, (citing *People v. Tucker*, 167 Ill. 2d 431, 435, 657 N.E.2d 1009, 1011 (1995)). “Where that language is clear and unambiguous, we must apply the statute without further aids of statutory construction.”

*Williams*, 239 Ill. 2d at 506 (citing *People v. Bole*, 155 Ill. 2d 188, 197-98, 613 N.E.2d 740, 744-45 (1993)).

¶ 14 Both briefs focus on the interpretation of the phrase “as a result of a revocation.” 730 ILCS 5/5-4.5-100(e) (West 2012). However, without the full context of the phrase, there can be confusion about the meaning of that section of the statute. 730 ILCS 5/5-4.5-100(e) (West 2012). When looking at the phrase “for any time spent in custody as a result of a revocation,” it refers to all time spent in custody on the revocation prior to sentencing on the crime in which the person is charged. 730 ILCS 5/5-4.5-100(e) (West 2012). Section 5-4.5-100(e) of the Unified Code (730 ILCS 5/5-4.5-100(e) (West 2012)) states, “An offender charged with the commission of an offense committed while on parole, [MSR], or probation shall not be given credit for time spent in custody under subsection (b) for that offense for any time spent in custody as a result of a revocation of parole, [MSR], or probation.” A plain language reading of the statute reveals the legislature did not intend to give sentence credit for the time spent in custody for a revocation of MSR or parole prior to the revocation hearing.

¶ 15 This is consistent with similar provisions elsewhere in the credit calculation statute. See *People v. Leeper*, 317 Ill. App. 3d 475, 485, 740 N.E.2d 32, 41 (2000) (finding a defendant is not entitled to credit for time spent in custody upon his return to prison for a parole violation). In addition, the section of the statute that previously permitted such credit (730 ILCS 5/5-8-7 (West 2008)) has since been repealed (repealed by Pub. Act 95-1052, § 95 (eff. July 1, 2009)).

¶ 16 Assuming *arguendo* the statute is ambiguous, further support for this interpretation of the statute may be found in the legislative history cited in the State’s brief. The sponsor of the legislation leading to enactment of subsection (e), Representative Jim Durkin,

stated, “[T]he time in which [incarcerated defendants] had served from the moment they were brought back in on the revocation until it’s been resolved cannot be used as time credit \*\*\* [t]hat time within the county jail is not credited towards any penalty or any sentence which comes after the fact on the case which had created the revocation of the MSR.” 96th Gen. Assem., House Proceedings, May 18, 2009, at 36 (statements of Representative Durkin).

¶ 17 In the case before this court, defendant was charged with aggravated robbery and was arrested on October 16, 2012. The prosecutor during sentencing said, “[H]e immediately got a parole hold” and was in custody awaiting the revocation hearing. During the time for which defendant seeks sentence credit, he was imprisoned in the Illinois Department of Corrections (IDOC). On November 30, 2012, defendant was transported to IDOC while awaiting disposition of his revocation of MSR, as well as completion of his sentence in the Champaign County cases. Defendant cannot receive credit toward his sentence in this Coles County case for the time while on the parole hold or during incarceration for the revocation of MSR. However, defendant is entitled to credit after completion of his sentence subsequent to revocation.

¶ 18 “This court reviews *de novo* the calculation of the number of days a defendant served in presentence custody because the resolution of that issue does not require deference to the circuit court’s reasoning.” *People v. Daily*, 2016 IL App (4th) 150588, ¶ 19, 74 N.E.3d 15. “If defendant is held in custody for any part of a day, he is entitled to credit against his sentence for that day.” *People v. Compton*, 193 Ill. App. 3d 896, 904, 550 N.E.2d 640, 645 (1990) (citing *People v. Johns*, 130 Ill. App. 3d 548, 549, 474 N.E.2d 739, 740 (1984)). When calculating the days of sentence credit a defendant is entitled to receive, the court does not count the date of the issuance of sentencing judgment. *Williams*, 239 Ill. 2d at 509. When the record is unclear as to whether the defendant received his sentencing credit, we remand to the trial court for “entry of a

new sentencing order reflecting the appropriate credit the defendant is entitled to receive.”  
*People v. Winslow*, 258 Ill. App. 3d 327, 330, 630 N.E.2d 507, 509 (1994).

¶ 19 In this case, there is a dispute about when the defendant was released from his term of incarceration on the revocation of MSR in the Champaign County cases. During sentencing, the prosecutor contended, according to his records, defendant finished his term in prison for the revocation of MSR on June 9, 2013, and remained incarcerated awaiting sentencing for the aggravated robbery in the Coles County case until August 26, 2013, when he posted bail. The State said defendant was entitled to a credit of 78 days. Based on our calculation of the State’s dates, defendant was owed a sentence credit of 79 days because defendant was released on bail, not sentenced, on August 26, 2013, requiring August 26, 2013, to count. Defendant submitted an exhibit, a police custody report from Coles County, which showed defendant was in custody after finishing his term for revocation of MSR, from June 7, 2013, to August 26, 2013. According to the police custody report, defendant should be entitled to 81 days of sentence credit. The State has offered no evidence to rebut defendant’s contention of the June 7 release. As the record is unclear, we remand this case to the trial court to determine when defendant finished his term of incarceration for the revocation of the MSR and to calculate his sentence credit in a manner consistent with this order.

¶ 20 B. Presentence Monetary Credit

¶ 21 Defendant argues on appeal, due to error in the calculation of his sentence credit, he is entitled to more monetary credit toward his fines and fees. We agree he may be entitled to such credit.

¶ 22 “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.” 725 ILCS 5/110-14(a) (West 2012).

¶ 23 In this case, defendant was awarded \$390 *per diem* credit toward his fines due to the 78-day sentence credit calculation. Upon remand, if it is determined defendant is entitled to the 81 days, as the records may reflect, the *per diem* credit against creditable fines increases by \$15 to a total amount of \$405.

¶ 24 C. Assessment

¶ 25 Defendant argues this court should vacate six fines improperly imposed by the circuit clerk, and the State agrees. However, after our original judgment, the supreme court handed down its decision in *Vara*, 2018 IL 121823, ¶ 23, which held the appellate court lacks jurisdiction to review a circuit clerk’s recording of fines that were not included in the circuit court’s final judgment. Thus, this court lacks jurisdiction to address defendant’s challenge to his fines under *Vara*.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm defendant’s convictions and sentences and remand with directions to calculate the sentence credit and monetary credit against creditable fines in this case. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal (55 ILCS 5/4-2002(a) (West 2016)).

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