

NOTICE
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2018 IL App (4th) 170881-U
NOS. 4-17-0881, 4-17-0882, 4-17-0890 cons.

FILED
September 27, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
RODNEY D. GRAVES,)	Nos. 12CF805
Defendant-Appellant.)	14CF1441
)	14CF1442
)	
)	Honorable
)	Robert C. Bollinger,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed as modified, finding defendant is entitled to eight additional days of sentence credit and an additional \$40 credit against his fines. We also found we had no jurisdiction to consider whether the circuit clerk improperly imposed certain fines.

¶ 2 In July 2015, defendant pleaded guilty in three separate cases to unlawful possession of a controlled substance with the intent to deliver and to violation of his bail bond. The trial court sentenced him to prison in each case and also awarded him sentence credit for time spent in pretrial custody and monetary credit against his fines.

¶ 3 In these consolidated appeals, defendant argues (1) he is entitled to additional sentence credit for time spent in pretrial custody, (2) he is entitled to additional monetary credit against his fines, and (3) the fines improperly imposed by the circuit clerk must be vacated. We affirm the trial court’s judgment as modified.

¶ 4

I. BACKGROUND

¶ 5 In June 2012, the State charged defendant by information in Macon County case No. 12-CF-805 (No. 4-17-0881) with single counts of unlawful possession of a controlled substance with intent to deliver while on church property (720 ILCS 570/407(b)(1) (West 2012)) and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). Defendant was in custody on these offenses from June 6, 2012, to June 29, 2012, when he was released on bond.

¶ 6 After defendant failed to appear, his bond was forfeited and a warrant was issued for his arrest in July 2013. In November 2014, the State charged defendant by information in Macon County case No. 14-CF-1441 (No. 4-17-0882) with the offense of violation of the bail bond (720 ILCS 5/32-10(a) (West 2014)). The State also charged defendant by information in Macon County case No. 14-CF-1442 (No. 4-17-0890) with the offense of violation of the bail bond in a different case. Arrest warrants were issued in both cases. Defendant was arrested in Arkansas on the Macon County warrants on May 3, 2015, and transported back to Illinois.

¶ 7 In July 2015, defendant pleaded guilty in case No. 12-CF-805 to the offense of unlawful possession of a controlled substance with intent to deliver and in case Nos. 14-CF-1441 and 14-CF-1442 to the offenses of violating his bail bond.

¶ 8 In December 2015, the trial court held a joint sentencing hearing in all three cases. In case No. 12-CF-805, the court sentenced defendant to seven years in prison, with sentence credit from June 6, 2012, to June 29, 2012, and May 11, 2015, to December 16, 2015, and ordered the sentence to run consecutive to the sentences imposed in the bail bond cases. The court imposed a street-value fine of \$430, a crime-lab fee of \$100, and a drug-treatment assessment of \$2000. The circuit clerk imposed additional assessments.

¶ 9 In case No. 14-CF-1441, the trial court sentenced defendant to eight years in prison, with sentence credit from May 11, 2015, to December 16, 2015, and ordered the sentence to run concurrent to the sentence in case No. 14-CF-1442 and consecutive to the sentence in case No. 12-CF-805. The circuit clerk also imposed various assessments.

¶ 10 In case No. 14-CF-1442, the trial court sentenced defendant to six years in prison, with sentence credit from May 11, 2015, to December 16, 2015, and ordered the sentence to run concurrent to the sentence in case No. 14-CF-1441 and consecutive to the sentence in case No. 12-CF-805. The circuit clerk also imposed various assessments.

¶ 11 Defendant filed appeals in each case, which were all remanded to the trial court in May 2017 for compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). In October 2017, defendant filed motions to withdraw his guilty pleas and vacate the judgments and motions to reconsider his sentences. In November 2017, the court denied all motions. Defendant appealed each case, and this court consolidated the appeals.

¶ 12 II. ANALYSIS

¶ 13 A. Sentence Credit

¶ 14 Defendant argues he is entitled to eight additional days of sentence credit for time spent in custody in Arkansas in this case. We agree, and the State concedes.

¶ 15 Section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2014)) provides an offender shall be given credit on his sentence “for the number of days spent in custody as a result of the offense for which the sentence was imposed.” A “defendant is entitled to one day of credit for each day (or portion thereof) that he spends in custody prior to sentencing, including the day he was taken into custody.” *People v. Lignons*, 325 Ill. App. 3d 753, 759, 759 N.E.2d 169, 174 (2001). Moreover, “[d]etention in another state is to

be credited against a defendant's sentence if the detention in the other state is a result of the offense for which the defendant is sentenced." *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 90, 991 N.E.2d 896 (citing *People v. Elder*, 392 Ill. App. 3d 133, 138, 910 N.E.2d 202, 206 (2009)). A claim of error in the calculation of mandatory sentence credit cannot be waived. *People v. Hill*, 2014 IL App (3d) 120472, ¶ 27, 6 N.E.3d 860 (citing *People v. Whitmore*, 313 Ill. App. 3d 117, 121, 728 N.E.2d 1267, 1270 (2000)).

¶ 16 In the case *sub judice*, the trial court awarded defendant presentence custody credit for each conviction starting from May 11, 2015, to December 16, 2015. However, defendant was arrested and taken into custody in Arkansas for these offenses on May 3, 2015. The State concedes defendant is entitled to eight additional days of sentence credit, and we accept the State's concession. No issue has been raised regarding defendant's entitlement to sentence credit from June 6, 2012, to June 29, 2012, in case No. 12-CF-805.

¶ 17 B. Monetary Credit

¶ 18 Defendant argues he is entitled to monetary credit of \$5 per day against his imposed fines. We agree, and the State concedes.

¶ 19 Section 110-14(a) of the Code of Criminal Procedure of 1963 states "[a]ny 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 2014). The statutory right to the monetary credit is mandatory. *People v. Brown*, 406 Ill. App. 3d 1068, 1084, 952 N.E.2d 32, 45 (2011). Moreover, "[t]he issue of monetary credit against a defendant's fine cannot be waived and may be raised for the first time on appeal." *People v. Sulton*, 395 Ill. App. 3d 186, 188, 916 N.E.2d 642, 644 (2009).

¶ 20 In Macon County case No. 12-CF-805, the trial court imposed a street-value fine of \$430, a crime-lab fee of \$100, and a drug-treatment assessment of \$2000. A docket entry indicates defendant was to be given credit against the drug-treatment assessment in the amount of \$1215 for time previously spent in custody. However, because defendant was in custody for an additional eight days, he is entitled to an additional \$40 of monetary credit.

¶ 21 C. Circuit Clerk Fines

¶ 22 Defendant argues the fines improperly imposed by the circuit clerk must be vacated. We find we have no jurisdiction to consider this issue.

¶ 23 This court has previously addressed the impropriety of the circuit clerk imposing judicial fines. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 55-73, 10 N.E.3d 959.

“Although circuit clerks can have statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act.” (Emphases omitted.) *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Thus, circuit clerks “may not, on their own initiative, assess any criminal fines or fees that must be imposed by a court.” *People v. Vara*, 2018 IL 121823, ¶ 31.

¶ 24 In its most recent case addressing the improper imposition of fines by the circuit clerk, the supreme court stated, in part, as follows:

“Because the circuit clerk had no authority to levy any fines against defendant, the recording of the additional fines was invalid and unenforceable. However, the fact that the clerk’s action was improper does not mean that defendant can challenge the unauthorized fines through the appeal process. The appellate court is constitutionally vested with jurisdiction to review final

judgments entered by circuit courts. The recording of a fine is a clerical, ministerial function and is not a judgment—void or otherwise. Therefore, the improper recording of a fine is not subject to direct review by the appellate court.” *Vara*, 2018 IL 121823, ¶ 23.

Thus, the court concluded “the appellate court lacked jurisdiction to review the clerk’s recording of mandatory fines that were not included as part of the circuit court’s final judgment.” *Vara*, 2018 IL 121823, ¶ 23.

¶ 25 In these cases, defendant asks this court to vacate the following fines imposed by the circuit clerk and documented in the payment information sheets: (1) \$9.50 nonstandard assessment, (2) \$50 court assessment, (3) \$100 violent crime assessment, (4) \$10 medical costs assessment, (5) \$5 youth diversion assessment, (6) \$4.75 drug court assessment, (7) \$0.25 clerk operation deduction assessment, (8) \$28.50 child advocacy fee, (9) \$15 for State Police operations, (10) \$30 juvenile expungement assessment, and (11) \$2 clerk operation add-ons assessment. Defendant also asks this court to vacate the \$130 lump sum surcharge in case No. 12-CF-805 and the \$20 lump sum surcharges in case Nos. 14-CF-1441 and 14-CF-1442. In light of the supreme court’s decision in *Vara*, however, we find we have no jurisdiction to review the circuit clerk’s imposition of these fines.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court’s judgments as modified: the sentences are to be modified to give defendant presentence custody credit from May 3, 2015, to December 16, 2015, and an additional \$40 of monetary credit against his fines.

¶ 28 Affirmed as modified; cause remanded with directions.