2013 IL App (4th) 120032-U

NO. 4-12-0032

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 1, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
CHARLES E. COLEMAN,	)	No. 08CF1291
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) rejected the defendant's argument that the alleged coconspirator's hearsay statements were improperly admitted, (2) declined to find that the trial court's remarks at sentencing were reviewable under the plain-error doctrine, and (3) reversed various fines and fees, directing that the defendant receive $5 per day credit against the remaining fines.

¶ 2 In May 2011, the trial court found defendant, Charles E. Coleman, guilty at a bench trial of possession of a controlled substance (100 grams or more but less than 400 grams of a substance containing cocaine) with intent to deliver, having a previous intent-to-deliver conviction (720 ILCS 570/401(a)(2)(B) (West 2006)). The court later sentenced him to 11 years in prison.

¶ 3 Defendant appeals, arguing that the trial court erred by (1) considering "the alleged coconspirator's hearsay statements as evidence that there existed a conspiracy which

would allow those same hearsay statements to be admitted into evidence under the coconspirator exception to the hearsay rule," (2) considering his failure to testify as a factor in aggravation at sentencing, (3) ordering him to pay fines that were imposed without statutory authority, and (4) not affording him the credit against his fines for the time spent in presentence custody. We affirm in part, reverse in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 A. The Previous Appeal

¶ 6 This case is before this court for the second time. In April 2009, when this case was set for trial in Macon County, the State filed a motion to admit the statements of defendant's alleged coconspirator, Kwain Ewing. The trial court conducted a hearing on that motion and denied it. The State appealed, and this court reversed and remanded for further proceedings. *People v. Coleman*, 399 Ill. App. 3d 1198, 931 N.E.2d 268 (2010) (*Coleman I*).

¶ 7 The first argument defendant presents in this appeal again concerns the admissibility of Ewing's coconspirator statements. Despite this court's earlier reversal of the trial court's decision not to admit that testimony, defendant contends that the precise issue before this court is now different than it was in the earlier appeal. Defendant further contends that (1) this court decided issues in the earlier appeal that were not before it and (2) in doing so, we reached an incorrect result and should reconsider our decision.

¶ 8 Because defendant's arguments in this appeal focus extensively on our prior decision in *Coleman I*, we will quote extensively from that decision in order to clarify what we said and the context in which we said it. We begin with our reference to the trial court's hearing on the State's motion to admit the coconspirator statements of codefendant Ewing, as follows:

"At the hearing, the State indicated the evidence would show that Tristen Green was operating as a confidential informant with the Decatur police department and working with Detective Shannon Seal. Seal applied for and received a court-authorized overhear. On September 2, 2008, Green was outfitted with the overhear device and met with codefendant Ewing. Ewing and Green had conversations about buying 4.5 ounces of cocaine for $1,200 per ounce, or $5,400 total. Ewing indicated he needed to go to Chicago to meet with the 'old heads' who had 'anything you want' including cocaine, heroin, pills, and cannabis. Ewing agreed to contact Green when he got back to town. The next day, Ewing contacted Green and arranged to exchange $5,400 for 4.5 ounces of cocaine. Seal and other officers conducted surveillance. Originally, the meeting was to occur at a gas station on North Woodford. The officers saw a Jaguar with two black males inside pull up to the gas station on North Woodford. However, during phone calls, the location of the cash-for-drug exchange was changed to a Cub Foods grocery store. The officers saw the Jaguar, in which defendant was identified as the driver and Ewing was identified as the passenger, go to the Cub Foods parking lot. Both defendant and Ewing got out of the car and proceeded to the front of the store. When Green arrived at Cub Foods, Ewing

started to walk from the front of the store to his vehicle. The police intercepted him before he could get in the car. After Ewing was arrested, the police found about 150 grams of cocaine and some cannabis. The police also arrested defendant because he was the person who drove Ewing to the parking lot.

When interviewed by the police, defendant stated he had come down from Chicago because it was a day off work. He met Ewing at a house on Macon Street. Ewing needed a ride to the grocery store so defendant gave him one. The officers confirmed with defendant that he had not stopped anywhere else. They then confronted him with the fact that they had evidence that he and Ewing stopped at a Circle K in Forsyth on Koester Drive.

Defendant gave the police consent to search his hotel room. The police found a piece of paper with $5,400, the amount of the transaction that was set up between Ewing and Green, on it. Defense counsel noted the math on the paper did not add up to $5,400.

The State indicated it was seeking to admit the recorded conversation between Green and Ewing through Detective Seal. The conversation was recorded with a digital recorder and Seal could testify and lay the foundation for its admission.

The trial court stated the following in announcing its ruling:

'All right. Well, first of all, I think it is a good idea to resolve this beforehand. It's definitely a good idea. As far as the co[ ]conspirator's statements are concerned, they're an exception to the hearsay rule as counsel knows. I think the attorneys have accurately stated the law regarding determining whether or not an alleged purported co[ ] conspirator's statement can be admitted against a particular defendant in a trial. The—I'm going to focus on the context of the statements that we're specifically dealing with in this motion which would have been, as I understand it, the statements of September 2nd when the confidential source met with the co[ ]defendant. Apparently, Mr. Ewing is his name. And, as I understand it, from reading the motion and hearing the arguments of counsel, what was stated, among other things by the co[ ] defendant was, after the agreement was made, that he would be talking to, going to Chicago, making arrangements with, as [the prosecutor mentioned], "the old heads." So at that point in time we had

statements of the co[ ]defendant suggesting that, in fact, there were other people involved in making the arrangements so this transaction could be completed. Now, as I understand the law—and [the prosecutor] is correct, circumstantial evidence may be considered to determine whether or not there's sufficient independent evidence for purposes of admitting a co[ ]conspirator's statement. At that point in time, and it's not surprising that the name of this defendant wasn't mentioned, just these ["]old heads["] in Chicago that were going to apparently or supply the, I guess it was cocaine, whatever the contraband was. Now, as I understand it, reviewing the law, the statement must be made during the course and in furtherance of the conspiracy. At that point in time, on September 2nd[,] we have circumstantial evidence that the co[ ]defendant may be referring to this defendant because apparently there's further evidence that this defendant came down from Chicago. Okay. We do have that. There are a lot of people in Chicago. So I don't know how much that narrows us down to whether

or not at that point in time there was certain independent, or sufficient evidence not to establish a conspiracy, which there was, but to establish whether or not this defendant was involved in the conspiracy at that point in time. And, you know, if you think outside the box, it's possible that when the statements were made by Mr. Ewing on September 2nd, unlikely, but possible, that he didn't know who the supplier would be or that there were a number of potential suppliers or ["]old heads["] in Chicago who could deliver the goods, so to speak, so he could consummate this transaction apparently the next day. At that point in time, however, September 2nd, I don't think there's sufficient evidence at that point, independent evidence to suggest that this defendant may have been involved in this alleged conspiracy. All that other evidence I heard about with regard to this defendant driving Mr. Ewing down the next day in the vehicle and going from different locations before Mr. Ewing exited the car and apparently was arrested by police, I don't give those a whole lot of weight because I think, as I read

> the law, and again, counsel may disagree, and I respect that, the [c]ourt has to focus on the point in time at which the statements sought to be introduced have been made. And I just think based on what I've heard today, based on reviewing the reports—or the motion as what I understand the evidence would be, there isn't a sufficient independent basis. So I will deny the motion, and that's not saying that if we go to trial on other counts that some of this evidence is about, you know, who drove the person with the drugs down here, what was in the hotel room, those are separate issues as far as I'm concerned. I'm focusing only on the statements made by Mr. Ewing on September 2nd.'

***

II. ANALYSIS

On appeal, the State contends the trial court erred by denying the State's motion to admit the hearsay evidence under the coconspirator exception to the hearsay rule. ***

The coconspirator exception to the hearsay rule provides that, 'any act or declaration (1) by a coconspirator of a party, (2) committed in furtherance of the conspiracy, and (3) during its

pendency is admissible against each and every coconspirator, provided that (4) a foundation for its reception is laid by independent proof of the conspiracy.' *People v. Childrous,* 196 Ill. App. 3d 38, 51, 552 N.E.2d 1252, 1261 (1990). 'The coconspirator hearsay exception does not extend to a statement which is merely a narrative of past occurrences and which does not further any objective of the conspiracy.' *People v. Kliner,* 185 Ill. 2d 81, 141, 705 N.E.2d 850, 881 (1998).

'This court has held that the State must make an independent, *prima facie* evidentiary showing of the existence of a conspiracy between the declarant and the defendant.' *People v. Ervin,* 226 Ill. App. 3d 833, 842, 589 N.E.2d 957, 964 (1992). Evidence of the conspiracy may be totally circumstantial; however, it must be sufficient, substantial, and independent of the declarations made by the coconspirator in order for the hearsay statements to be admitted under this exception. *Ervin*, 226 Ill. App. 3d at 842, 589 N.E.2d at 964. ***

Initially, we note the trial court indicated it ruled the way it did because at the point in time the statement the State sought to introduce was made, the court did not 'think there's sufficient evidence at that point, independent evidence to suggest this defendant may have been involved in this alleged conspiracy.' The

court thought it had 'to focus on the point in time at which the statements sought to be introduced have been made.' Therefore, the court did not give much weight to the paper found in defendant's hotel room and the fact defendant drove Ewing back from Chicago the next day and went to several different locations with Ewing and then was arrested with him. This court is not aware of any requirement that the nonhearsay evidence that shows the existence of a conspiracy must have existed at the time the coconspirator's statement sought to be admitted was made. In *People v. Davis*, 46 Ill. 2d 554, 556-58, 264 N.E.2d 140, 141-42 (1970), our supreme court rejected the defendant's argument that evidence of a codefendant's conversation with another party regarding a potential purchase of narcotics from the defendant was erroneously allowed into evidence because that conversation took place prior to the defendant's arrival at the scene. The defendant had joined the group after the conversation at issue took place and then participated in the narcotics transaction. *Davis,* 46 Ill. 2d at 556, 264 N.E.2d at 141. That court's discussion of the facts shows the court took into consideration what happened after the codefendant's conversation that was at issue took place. See *Davis,* 46 Ill. 2d at 556-57, 264 N.E.2d at 141-42.

Defendant cites *People v. Duckworth,* 180 Ill. App. 3d 792,

795, 536 N.E.2d 469, 472 (1989), for the proposition that, 'the mere appearance of defendant at the scene of the drug transaction does not establish any illicit association between him and [the alleged coconspirator].' In *Duckworth,* Tammy Duckworth made statements to an undercover agent that her uncle would be the source of the drugs the agent agreed to buy from Tammy. *Duckworth,* 180 Ill. App. 3d at 793, 536 N.E.2d at 470. The agent also told Tammy to have her uncle come to the parking lot and park a few rows away. *Duckworth,* 180 Ill. App. 3d at 795, 536 N.E.2d at 471. Later, a van with a male driver, the defendant, pulled into the parking lot where the exchange was to take place and parked a short distance away from the agent's vehicle. *Duckworth,* 180 Ill. App. 3d at 795, 536 N.E.2d at 471. The State argued this was sufficient, independent evidence of a conspiracy between Tammy and the defendant. *Duckworth,* 180 Ill. App. 3d at 795, 536 N.E.2d at 471-72. The court held there was insufficient evidence of a conspiracy between Tammy and the defendant. *Duckworth,* 180 Ill. App. 3d at 795, 536 N.E.2d at 471. The court noted that (1) the defendant's mere presence at the scene of the drug transaction did not establish an illicit association between Tammy and the defendant and (2) Tammy's act in returning with defendant created the inference that he was her uncle and source

but was a verbal act which also constituted impermissible hearsay. *Duckworth,* 180 Ill. App. 3d at 795, 536 N.E.2d at 472. The court then stated that '[n]one of the nonhearsay evidence establishes an agreement between the two defendants, which is a necessary element of a simple conspiracy.' *Duckworth,* 180 Ill. App. 3d at 795, 536 N.E.2d at 472.

However, there was more evidence of a conspiracy in the case *sub judice.* Here, Ewing told Green he would have to talk to the 'old heads' in Chicago but would contact Green when Ewing arrived back from Chicago. The agreed-upon price was $5,400 for 4.5 ounces of cocaine. Ewing contacted Green the next day to set up the drug exchange. Defendant was with Ewing when they were arrested in the Cub Foods parking lot. Defendant is from Chicago. Moreover, defendant gave police consent to search his hotel room, where the police found a piece of paper with $5,400 written on it, the exact agreed-upon price for the 4.5 ounces of cocaine. Finally, defendant lied to the police about how long he had been with Ewing and where they had stopped that day. This constitutes more than just mere presence at the drug transaction. *While circumstantial, these facts, taken together and considered independent of the coconspirator's hearsay statement, constitute sufficient evidence of a conspiracy between defendant and Ewing*

to sell these drugs. Therefore, the State's motion to admit coconspirator's statements should have been granted." (Empahsis added.) *Coleman I*, 399 Ill. App. 3d at 1200-03, 931 N.E.2d at 269-73.

¶ 9 B. Trial Court Proceedings After Remand

¶ 10 1. *The Bench Trial*

¶ 11 On remand, defendant again asserted that Ewing's statements should not be admissible as coconspirator statements despite the decision of this court in *Coleman I*. He contended that the issue considered by this court in *Coleman I* was whether evidence that did not exist at the time the statement was made could be used to prove that a conspiracy existed. In contrast to that issue, defendant explained to the trial court that he was now arguing that Ewing's statements were not admissible because they were not made while the conspiracy was in effect, which defendant asserted was an issue not reviewed by this court in *Coleman I*. The court denied defendant's request to bar the admissibility of the coconspirator's statement, explaining that in so ruling, the court had reviewed this court's decision.

¶ 12 The trial court then conducted a bench trial at which the evidence referred to in *Coleman I* was again presented. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we will not review it in detail.

¶ 13 Other significant evidence presented at defendant's bench trial concerned the officers' seizure of $2,295 from defendant's pockets after arresting him in the grocery store parking lot. Ewing testified that defendant had no knowledge of the drugs, but Ewing admitted telling Seal that defendant brought the drugs down from Chicago and that Ewing was being paid

$600 for "middling" the drug deal for defendant. The defendant did not testify at trial.

¶ 14 The trial court found defendant guilty of possession of cocaine with intent to deliver and ruled that the other possession count was a lesser-included offense. After the State dismissed cannabis-related charges against defendant, the court set the matter for a sentencing hearing.

¶ 15 2. *The Sentencing Hearing*

¶ 16 At the September 2011 sentencing hearing, the trial court made it clear that defendant was to be sentenced on one count, which was his conviction for possession of a controlled substance (100 grams or more but less than 400 grams of a substance containing cocaine) with intent to deliver, having a prior possession-of-a-controlled-substance-with-intent-to-deliver conviction. See 720 ILCS 570/401(a)(2)(B) (West 2006). The court stated that the minimum sentence for defendant's conviction was nine years in prison and asked counsel if the court was correct. Neither counsel disputed the court's assessment.

¶ 17 During the prosecutor's remarks to the court, she noted that the sentencing range for the crime of which defendant was convicted was a minimum of 9 years and a maximum of 60 years in prison. The prosecutor pointed out that defendant had three drug-related convictions, with the first being in 1987 and the second in 1995. Defendant was to be sentenced for his third drug conviction, this time for a crime he committed in 2008. The prosecutor argued that based upon defendant's prior record and the amount of cocaine defendant brought down to Macon County from Chicago—namely, 147.7 grams—a minimum sentence would not be appropriate. The prosecutor ultimately recommended a 20-year sentence in prison and the imposition of various fines and fees, adding that although the State would not ask the court to impose a

sentence penalizing anybody for exercising the right to a trial, "[w]hat the court can consider is the lack of taking responsibility for your conduct, and in this case, obviously, the defendant has yet to take responsibility for his role in this transaction."

¶ 18 Defendant cited the various letters presented in mitigation and argued that "a minimum sentence is absolutely appropriate in this case." Defendant briefly exercised his right of allocution, stating that he was not a bad person, had not committed "many crimes," and asked the court to have mercy on him. He concluded by saying, "I'm sorry."

¶ 19 The trial court then discussed the sentencing of defendant and ultimately imposed a sentence of 11 years in prison. In the court's remarks, the court, in part, stated the following:

> "[Defendant] did not testify, which is very significant to the [c]ourt. [In] the [c]ourt's opinion, this was a very strong circumstantial case. In my mind, I think *** defendant, I don't know what he was doing in Chicago, but in this particular case he was trying to make himself a few extra bucks, and he was down here in Decatur watching his mule, because he's not familiar with Decatur and Decatur's people, and so on and so forth, and he got caught. I don't think it's any more or any less than that. Again, I don't know, exactly, what *** defendant was doing in Chicago. He was apparently working, but I do know what he was doing in Decatur.
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> * * *
>
> On the other hand, in terms of what I find significant, the

sentencing range here starts at nine years. Again, it is a 75 percent offense. So, the minimum penalty is very, very severe. There was no violence involved in this particular case. As I recall, there were no guns recovered in this particular case. And from looking at defendant's prior record, other than some assault thing from 1985, he does not have a prior history of violence, which again, the [c]ourt finds to be very significant."

¶ 20 After imposing an 11-year prison sentence on defendant, the trial court imposed a mandatory street fine of $14,770, a mandatory assessment of $3,000, a lab fee of $100, a deoxyribonucleic acid (DNA) indexing fee of $200, and a State's Attorney trial fee of $25.

¶ 21 3. *The Hearing on Defendant's Motion To Reconsider Sentence*

¶ 22 In September 2011, defendant filed a motion to reconsider sentence, in which he asked the court to reconsider its sentence and impose the minimum sentence of nine years. In that motion, defendant did not assert that the trial court committed any particular improprieties when imposing sentence. The court denied his motion.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Defendant argues that the trial court erred by (1) considering "the alleged coconspirator's hearsay statements as evidence that there existed a conspiracy which would allow those same hearsay statements to be admitted into evidence under the coconspirator exception to the hearsay rule," (2) considering his failure to testify as a factor in aggravation at sentencing, (3) ordering him to pay fines that were imposed without statutory authority, and (4) not affording

him the credit against his fines for the time spent in presentence custody. We will discuss these arguments in order.

¶ 26 A. The Trial Court's Admission of the Alleged Coconspirator's Hearsay Statements

¶ 27 Defendant contends that the trial court erred by admitting the hearsay statements of Ewing, the alleged coconspirator. Defendant asserts that (1) the court erred by using the hearsay statements themselves as the basis for finding that a conspiracy existed between defendant and Ewing, which would allow the statements to be admitted into evidence; (2) aside from Ewing's statements that were admitted into evidence, the State presented no additional evidence sufficient to establish that defendant joined with Ewing in a common agreement to sell narcotics; and (3) the law-of-the-case doctrine does not preclude this court from considering this issue because (a) the issue defendant presents in this appeal is different from the issue raised by the State in *Coleman I* and (b) this court should reconsider our earlier decision because it was decided incorrectly. We reject all of these contentions.

¶ 28 Earlier in this decision, we quoted at length from *Coleman I* to emphasize what we said and the context in which we said it. Our holding and its context make clear that our decision regarding the applicability of the coconspirator exception to the hearsay rule in this case was far broader than defendant contends, and we stand by that decision. We note that the italicized sentence near the end of our quotation of *Coleman I* makes clear, as the trial court concluded, that this court had determined that the coconspirator's hearsay exception applied in this case based upon the record then before us.

¶ 29 B. Defendant's Claim That the Trial Court Improperly Considered His Failure To Testify As a Factor in Aggravation at the Sentencing Hearing

¶ 30 Defendant next contends that the trial court violated his constitutional right to silence by considering his failure to testify as a factor in aggravation at his sentencing hearing. Defendant concedes that he failed to include this claim in his motion to reconsider sentence but argues nonetheless that this court must either reduce defendant's sentence or vacate it and remand for a new sentencing hearing.

¶ 31 In support of this argument, the most recent case defendant cites is *People v. Dameron*, 196 Ill. 2d 156, 751 N.E.2d 1111 (2001), in which the Supreme Court of Illinois reversed the defendant's death penalty when the record showed that the sentencing judge appeared to have conducted some "private investigation" during the pendency of the case regarding the appropriateness of the death penalty, as well as remarking about the significance of a murder trial in 1966 over which the judge's father presided as a circuit court judge and the sentencing comments his father made at that time. The supreme court reversed the death sentence and concluded as follows:

> "The trial judge sought alternative avenues of information in his effort to reach the correct result. Unfortunately, that effort led to the error here. Accordingly, in order to remove any suggestion of unfairness, this case should be assigned to a different judge on remand." *Dameron*, 196 Ill. 2d at 179, 751 N.E.2d at 1125.

We need hardly point out that the circumstances in *Dameron* are so remote from those in this case that the supreme court's holding in *Dameron* is entirely inapposite.

¶ 32 In response to defendant's argument, the State contends that the context of the trial

court's sentencing statement makes clear that the court was referring to defendant's failure to ever take any responsibility for his actions. Pointing to defendant's statement in allocution, the State asserts that he still did not take any responsibility or admit any guilt. Instead, he simply asked for the court's mercy and ended his statement with, "I'm sorry." The State notes that defendant did not explain what he was sorry for, and he did not give any indication of accountability for his actions.

¶ 33 In assessing the State's response, we note that the State inexplicably fails to cite three recent decisions of this court directly on point. Those decisions are *People v. Rathbone*, 345 Ill. App. 3d 305, 802 N.E.2d 333 (2003); *People v. Montgomery,* 373 Ill. App. 3d 1104, 872 N.E.2d 403 (2007); and *People v. Ahlers*, 402 Ill. App. 3d 726, 931 N.E.2d 1249 (2010). In each of these three cases, the defendant contended that the trial court engaged in some impropriety at the sentencing hearing that resulted in the imposition of a sentence greater than it should have been. And in each case, as in the present case, the defendant had failed to preserve the issue for appeal and argued that this court should consider his arguments as a matter of plain error.

¶ 34 In *Rathbone*, the defendant argued that the trial court abused its discretion by sentencing him for violating the terms of his probation rather than for residential burglary. *Rathbone*, 345 Ill. App. 3d at 308, 802 N.E.2d at 336. In *Montgomery*, the defendant argued that the trial court erred when sentencing him for various felony offenses because it determined that the defendant's conduct leading to conviction for the various offenses resulted in great bodily harm to the victims. *Montgomery*, 373 Ill. App. 3d at 1122-23, 872 N.E.2d at 419. In *Ahlers*, the defendant argued that the trial court erred when it imposed a prison sentence after considering (1) his mental retardation as an aggravating factor and (2) information from the reviewing

psychiatrist's evaluation that was allegedly obtained in violation of his privilege against self-incrimination. *Ahlers*, 402 Ill. App. 3d at 731, 931 N.E.2d at 1253. In each of these cases, we concluded that the defendant had forfeited review of the contentions he sought to raise and rejected his argument that the plain-error doctrine should apply.

¶ 35 We reaffirm what we said in the above three cases and conclude that the analysis contained in each applies fully to defendant's contention here. Accordingly, we reject defendant's argument that we should reverse his sentence and remand for a new sentencing hearing. In so concluding, we note the State's contention about what the trial court meant to say about defendant's failure to take responsibility, and reiterate what this court said in *Rathbone* and later quoted in *Ahlers*:

> "[The] defendant's claim is precisely the type of claim the forfeiture rule is intended to bar from review when not first considered by the trial court. Had [the] defendant raised th[e] issue in the trial court, that court could have answered the claim by either (1) acknowledging its mistake and correcting the sentence, or (2) explaining that the court did not improperly sentence [the] defendant ***. If the court did not change the sentence, then a record would have been made on the matter ***, avoiding the need for [the reviewing] court to speculate as to the basis for the trial court's sentence." *Rathbone*, 345 Ill. App. 3d at 310, 802 N.E.2d at 337.

¶ 36 While a trial judge should not consider, much less comment negatively on, a

defendant's exercise of his constitutional right not to testify, if defendant here had included this argument in his postsentencing motion, the trial judge would have had an opportunity to clarify or disavow his statement.

¶ 37 Although not necessary for our decision, we also note that the crime of which defendant was convicted carried a possible sentencing range of 9 to 60 years in prison. The trial court sentenced him to only 11 years in prison, a sentence far lower than the court could have imposed, given the circumstances of this crime and defendant's life, as revealed in the presentence report. It is not clear to us exactly how much lower defendant thinks the trial court could have gone in imposing sentence in this case or could go if we were to reverse the sentence and remand for a new sentencing hearing.

¶ 38 C. Various Fines

¶ 39 The State concedes that the clerk add-ons fine, the anti-crime fund fine, and the state police fine were imposed without statutory authority and must be vacated. The State also concedes that the nonstandard fine was improperly assessed and must be reduced to $10. Last, the State concedes that the defendant is entitled to receive $5 per day presentence incarceration credit to offset his children's advocacy center fine, youth diversion fine, nonstandard fine, drug assessment, and drug enforcement fines. We accept the State's concessions, vacate all of the fines to which the concessions apply, and remand with directions that the trial court award defendant the $5 per day presentence incarceration credit to offset those fines that remain.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the defendant's conviction, affirm his sentence in part, reverse his sentence in part, and remand with directions.

¶ 42 Affirmed in part and reversed in part; cause remanded with directions.