

No. 1-10-1057

**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).

SIXTH DIVISION  
JUNE 10, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 18580
	)	
SHERRIE CAMPBELL,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROBERT E. GORDON delivered the judgment of the court.

Justices Cahill and McBride concurred in the judgment.

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**O R D E R**

*HELD:* The circuit court substantially complied with the requirements for accepting defendant's admission to violating probation. Defendant is entitled to proper credit against her fines for pre-sentencing detention, but not against her \$200 DNA analysis fee as it is a fee rather than a fine.

Pursuant to a negotiated guilty plea, defendant Sherrie Campbell was convicted in 2007 of delivery of a controlled

substance (less than one gram of cocaine) and sentenced to two years' probation with \$1,145 in fines and fees. Pursuant to a 2009 admission that she violated probation, in exchange for the minimum applicable prison sentence, defendant's probation was revoked and she was resentenced to three years' imprisonment. On appeal, defendant contends that the court erred in failing to ask her before she admitted to violating probation that her admission was voluntary and not the result of coercion or promises beyond the agreement. She also contends that her fines were not credited for all of her pre-sentencing detention. For the reasons stated below, we correct the order assessing fines and fees to reflect the proper credit and otherwise affirm the judgment of the circuit court.

At the hearing on the petition to revoke probation on October 27, 2009, the court noted that the minimum prison sentence for defendant's offense is three years. After a brief recess, defense counsel told the court that defendant would "accept your Honor's offer of three years" in prison. The court informed defendant of her alleged violations of probation and admonished her regarding the applicable sentencing range and her right to a hearing where counsel could call and cross-examine witnesses. The parties stipulated to a detailed factual basis for the plea. The court did not expressly ask defendant whether her plea was made voluntarily and was not based on coercion or

promises beyond the plea agreement, nor did it make an express finding on that point. The court questioned defendant to determine that she was not under the influence of drugs at the time of the hearing. After the plea and resentencing, the court admonished defendant of her appeal rights, including that she must first file a motion to withdraw her plea within 30 days. Defendant did not file a motion seeking to vacate or withdraw her plea or to reconsider her sentence.

Defendant contends that the court erred in not asking her whether her plea or admission was voluntary and not the result of coercion or collateral promises. The State responds that defendant cannot raise this claim on appeal because she did not file a motion to withdraw her plea.

Regarding the State's contention, our supreme court clearly held in *People v. Tufte*, 165 Ill. 2d 66 (1995), that a defendant's admission that he violated probation is not a guilty plea and thus neither a motion to withdraw a guilty plea under Supreme Court Rule 604(d) (eff. July 1, 2006), nor an admonition of the need to file such a motion under Supreme Court Rule 605(c) (eff. Oct. 1, 2001), is required before appealing the revocation. Notably, two separate Supreme Court Rules govern guilty pleas and admissions to violation of probation. Ill. S. Ct. R. 402 (eff. July 1, 1997); R. 402A (eff. Nov. 1, 2003).

The State recognizes *Tufte* but argues that we should follow *People v. Ford*, 368 Ill. App. 3d 271, 275 (1<sup>st</sup> Dist. 2006), where this court dismissed for want of jurisdiction a defendant's challenge to the admonishments for his admission of violation of probation because he did not file a timely notice of appeal from the original sentence of probation, a written motion to withdraw his plea or reconsider his sentence, or a motion for leave to file late notice of appeal. However, beyond the decisive fact that *Tufte* as a supreme court case takes precedence over *Ford*, *Ford* is distinguishable in that the *Ford* defendant did not petition for leave to file a late notice of appeal while the instant defendant did. Moreover, *Tufte* was followed in *People v. Harris*, 392 Ill. App. 3d 503, 506-07 (2<sup>d</sup> Dist. 2009), where this court similarly stated that "a defendant who has admitted violating his or her probation is not required to move to withdraw the admission before appealing the order revoking the probation." We conclude that defendant's claim is not barred by her failure to file a motion to withdraw her admission that she violated probation and shall therefore consider the merits of defendant's contention that the court erred in not asking her whether her plea was voluntary or the result of coercion or collateral promises.

In *People v. Hall*, 198 Ill. 2d 173 (2001), our supreme court held that:

"before accepting a defendant's admission to a probation violation, the trial court should admonish the defendant to determine whether:

(1) the defendant understands the specific allegations in the State's petition to revoke probation;

(2) the defendant understands that he has the right to a hearing with defense counsel present at which the State must prove the alleged violation, and that he has the rights of confrontation and cross-examination at such a hearing;

(3) the defendant's admission is voluntarily made and not made on the basis of any coercion or promises, other than any agreement as to the disposition of his case;

(4) the defendant understands the consequences of his admission or the sentencing range for the underlying offense; and

(5) a factual basis exists for the admission." *Hall*, 198 Ill. 2d at 181.

Because probation revocation proceedings occur only after a criminal conviction, a defendant subject to a petition to revoke probation is entitled to fewer procedural rights than a defendant facing trial. *Hall*, 198 Ill. 2d at 177. Thus, due process is satisfied by substantial compliance: that is, where the trial court did not recite to the defendant, or ask the defendant if he or she understood, one of the listed items but the record affirmatively shows that the defendant in fact understood that item. *People v. Dennis*, 354 Ill. App. 3d 491, 495-96 (2004). "The goal is to ensure that defendant understood his admission, the rights he was waiving, and the potential consequences of his admission." *Dennis*, 354 Ill. App. 3d at 496.

Since *Hall*, the supreme court issued Supreme Court Rule 402A governing a defendant's admission that he violated probation and providing in relevant part:

"The court, by questioning the defendant personally in open court, shall confirm the terms of the agreement, or that there is no agreement, and shall determine whether any coercion or promises, apart from an agreement as to the disposition of the defendant's case, were used to obtain the admission."

Ill. S. Ct. R. 402A(b) (eff. Nov. 1, 2003).

Rule 402A expressly requires substantial compliance with its provisions. Ill. S. Ct. R. 402A (eff. Nov. 1, 2003).

Here, it is apparent from the record that defendant's admission resulted from the court's observation that defendant's minimum prison sentence would be three years. There is no indication on this record of a plea agreement or negotiation between the parties where coercion or collateral promises could have arisen. Therefore, we will not fault the court for not expressly inquiring into an issue that it could reasonably conclude did not exist. The court did have a concern regarding the voluntariness of defendant's admission -- whether she was under the influence of drugs at that moment -- and questioned defendant to allay that concern. The court could conclude from its admonishments and the circumstances that "defendant understood [her] admission, the rights [s]he was waiving, and the potential consequences of [her] admission." *Dennis*, 354 Ill. App. 3d at 496. We conclude that the court substantially complied with the requirements of *Hall* and Rule 402A.

Defendant also contends that her fines were not fully credited for all of her pre-sentencing detention under section 110-14 of the Code of Criminal Procedure. 725 ILCS 5/110-14(a) (West 2008). The parties correctly agree that the court credited

defendant for 82 days of detention in her initial sentence, or \$410 at the statutory daily rate of \$5, but then did not credit her for an additional 43 days of detention preceding her resentencing for violating probation, for a total of up to \$625 credit against her fines. The parties also agree that the credit applies to defendant's \$500 controlled substance assessment. 720 ILCS 570/411.2(a) (West 2008). However, the parties dispute whether the credit applies to her \$200 DNA analysis fee; that is, they dispute whether it is a fine that is subject to credit or a fee that is not.

In support of her contention that it is a fine, defendant cites to *People v. Long*, 398 Ill. App. 3d 1028, 1032-34 (4<sup>th</sup> Dist. 2010). See also *People v. Childs*, No. 4-09-0822 (March 4, 2011); *People v. Folks*, 406 Ill. App. 3d 300, 308 (4<sup>th</sup> Dist. 2010); *People v. Grubbs*, 405 Ill. App. 3d 187, 188-89 (3<sup>d</sup> Dist. 2010); *People v. Mingo*, 403 Ill. App. 3d 968, 973 (2<sup>d</sup> Dist. 2010); and *People v. Clark*, 404 Ill. App.3d 141, 143 (2<sup>d</sup> Dist. 2010) (all following *Long*). However, this district has found that the DNA analysis fee is "compensatory and a collateral consequence of defendant's conviction," and thus a fee rather than a fine, so that "the credit stated in section 110-14 \*\*\* cannot be applied." *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); see also *People v. Adair*, 406 Ill. App. 3d 133, 145 (2010); and *People v. Williams*, 405 Ill. App. 3d 958, 966

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(2010) (both following *Tolliver*). Moreover, we recently distinguished *Long* and concluded that the DNA analysis fee is a fee not subject to pre-sentencing detention credit. *People v. Anthony*, No. 1-09-1528 (March 31, 2011). We see no reason not to follow the detailed analysis in *Anthony*, and we similarly conclude that the DNA analysis fee is not subject to the credit.

Accordingly, the clerk of the circuit court is directed to correct the order assessing fines and fees to reflect \$500 credit for pre-sentencing detention rather than \$410 as now shown. The judgment of the circuit court is affirmed in all other respects.

Affirmed; order corrected.