

No. 1-09-3343

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).

FOURTH DIVISION
March 17, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 06 CR 27169
)	
CORNELL BYRD,)	Honorable
)	Neera Lall Walsh,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Salone concurred in the judgment.

O R D E R

HELD: Where the record on appeal was insufficient to determine the total days of presentence custody credit defendant was due, remand was required to clarify the total of days to be credited against his prison sentence and the \$5-per-day credit against fines imposed; a \$25 court services fee was properly assessed; and an unauthorized \$20 Violent Crime Victims Assistance fee was vacated.

Following a jury trial, defendant Cornell Byrd was convicted of possession of a controlled substance and was sentenced to a prison term of 4½ years. On appeal, defendant asserts he should have been credited with 128 days of presentence custody against his sentence rather than the 101 days actually credited. Defendant also contends the court erroneously imposed a \$25 court services fee and a \$20 Violent Crime Victims Assistance fee and failed to award him a credit of \$5 for each of the additional 27 days of presentence custody. We affirm the court services fee, vacate the Violent Crime Victims Assistance fee, and remand for recalculation of defendant's presentence custody credit.

Defendant's prison sentence of 4½ years for possession of a controlled substance was reduced by a presentence custody credit of 101 days, resulting in a \$5-per-day credit of \$505 by which a fines and fees total of \$1,140 was offset

On appeal, defendant first challenges the number of days for which he was awarded presentence custody credit, asserting he should have been awarded 128 days, not 110 days. The State responds that defendant was entitled to a maximum total credit of only 83 days for time spent in presentence custody.

Supreme Court Rule 615(b)(1) allows this appellate court to modify a sentencing order without remand to reflect credit for the amount of time spent in presentence custody. 134 Ill. 2d R. 615(b)(1); *People v. Heinz*, 391 Ill. App. 3d 854, 866-67 (2009).

In the present case, however, the record on appeal is insufficient to determine the exact number of days defendant spent in custody prior to sentencing. Defendant and the State agree that this cause should be remanded to the trial court for clarification of the record as to the number of days of credit due defendant for time spent in presentence custody, and we are in accord that remand for that purpose is appropriate.

Defendant next contends the trial court erroneously imposed two fees. He first asserts that the \$25 court services fee pursuant to section 5-1103 of the Counties Code (55 ILCS 5/5-1103) (West 2008)) was improperly assessed where it is authorized only for a conviction enumerated in the statute. Defendant contends the fee assessment was not authorized for a conviction for possession of a controlled substance, as it is not an offense specifically listed in the statute. In *People v. Adair*, ___ Ill. App. 3d ___, 940 N.E.2d 292 (2010), we ruled that the "limited application of section 5-1103 in criminal proceedings the defendant advocates is inconsistent with the legislature's clear intent, expressed in the plain language of the statute, in enacting such a fee." *Adair*, 940 N.E.2d at 302. The court services fee was both authorized and properly assessed.

Defendant also challenges the imposition of a \$20 fee pursuant to section 10(c)(2) of the Violent Crime Victims Assistance Act. 725 ILCS 240/10(c)(2) (West 2008). Defendant

contends, and the State agrees, that the statute specifies this penalty applies only when "no other fine is imposed." The assessment of other fines against defendant here precluded the imposition of this \$20 fee and it must be vacated. *People v. Jones*, 397 Ill. App. 3d 651, 659 (2009).

Finally, defendant asserts that because he was entitled to 128 days of presentence custody credit, rather than the 101 days awarded to him, he should receive a \$5-per-day credit for those 128 days, or a total credit of \$640. Defendant contends he was assessed a total of \$715 in fines, namely, a \$200 DNA analysis fee, a \$10 mental health court fee, a \$5 youth diversion/peer court fee, and a \$500 controlled substance assessment. He concludes that the \$715 in fines should be offset by \$640.

We agree that the \$10 mental health court fee, the \$5 youth diversion fee, and the \$500 controlled substance assessment were actually fines totaling \$515. However, the \$200 DNA analysis assessment is a fee, not a fine, and is not subject to the presentence custody credit. *People v. Williams*, ___ Ill. App. 3d ___, 940 N.E.2d 95, 102 (2010), citing *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). Upon an accurate determination of the number of days of presentence custody credit to which he is entitled, that number multiplied by \$5 will offset the fines imposed up to a maximum of \$515.

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Under our authority pursuant to Illinois Supreme Court Rule 615(b), we affirm defendant's prison sentence of 4½ years, vacate the \$20 Violent Crime Victims Assistance fee, and remand with directions that the trial court recompute the number of days for which defendant should be given presentence custody credit against his prison sentence, award defendant a credit of \$5 for each day of presentence custody credit, and reduce the fines total of \$515 by that credit amount.

For the foregoing reasons, the judgment of the circuit court is affirmed in part, vacated in part, and remanded in part.

Affirmed in part, vacated in part, and remanded in part.