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No. 3--09--0419

Order filed May 4, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	No. 05--CF--1591
CHANNON L. SWYERS,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

Held: An appeal from a sentence entered upon a revocation of probation does not revive claims of voidable error pertaining to the amount of fines, fees, or costs imposed in the original probation order. The defendant is entitled to $5 of monetary credit against her fines for each day she spent in presentence incarceration, including the days she was was in presentence incarceration pursuant to the State's petition to revoke her probation.

The defendant, Channon L. Swyers, was placed on probation after pleading guilty to unlawful possession of methamphetamine

manufacturing chemicals (720 ILCS 570/401(c)(6.5) (West 2004)) and attempted unlawful calculated criminal drug conspiracy (720 ILCS 570/405(a); 5/8--4 (West 2004)). Her probation was revoked, and she was sentenced to two concurrent terms of 10 years of imprisonment. She filed a motion to reconsider the sentence, which was denied. The defendant appeals. On appeal, the defendant argues that she is entitled to: (1) a reduction in her street value fine because the street value was not established by evidence; (2) a $5 *per diem* monetary credit for 652 days served in presentence incarceration; and (3) a $1,000 reduction in her total fines, fees, and costs because the total reflects a clerical error of an additional $1,000. We affirm the revocation of the defendant's probation and her sentence, and remand with directions.

FACTS

On September 18, 2006, the defendant pled guilty to unlawful possession of methamphetamine manufacturing chemicals and attempted unlawful calculated criminal drug conspiracy. She was sentenced to 48 months of probation and ordered to serve 180 days in jail. She was also awarded 413 days of sentencing credit and ordered to pay fines, fees, and costs in the amount of $6,703, which included a street value fine of $2,000.

On December 14, 2007, the State filed a petition to revoke the defendant's probation because she failed to report to the

probation department. According to the docket sheet, on October 24, 2008, the defendant was taken into custody on the petition to revoke probation, and she did not post bail. The same day, the State filed an amended petition to revoke probation to include allegations of the defendant's forgery conviction in Missouri on July 3, 2008.

On November 21, 2008, the trial court revoked the defendant's probation. On May 8, 2009, the trial court orally sentenced the defendant to two concurrent 10-year terms of imprisonment, credit for "whatever time she ha[d] in custody[,]" and "[j]udgment for any costs that might still be due[.]" On May 26, 2009, the trial court denied the defendant's motion to reconsider her sentence of 10 years of imprisonment and entered a written judgment remanding her to the Department of Corrections (DOC). The judgment also indicated that the defendant was entitled to 652 days of sentencing credit for days served in custody from August 1, 2005, to September 18, 2006, and October 1, 2008, to May 26, 2009. The defendant filed a motion to reconsider the sentence, which was denied. The defendant appealed.

I. Street Value Fine

On appeal, the defendant argues that she is entitled to a reduction in her street value fine because it was not based on evidence of the value of the methamphetamine manufacturing

chemicals as statutorily mandated in section 5--9--1.1--5(a) of the Unified Code of Corrections. 730 ILCS 5/5--9--1.1--5(a) (West 2008)). The State argues that this court lacks jurisdiction to review this issue because the defendant did not file a timely appeal from the probation order, in which the fine was imposed on the defendant, entered on September 18, 2006.

Jurisdiction to consider errors arising under a particular judgment of the trial court is conferred upon the appellate court by the timely filing of a notice of appeal. Ill. S. Ct. R. 606(a) (eff. March 20, 2009). In general, no appeal may be taken after 30 days from the entry of the order or judgment from which the appeal was taken. See Ill. S. Ct. R. 606(b) (eff. March 20, 2009). Unless the judgment was void, this court has no authority to review a claim of error if the defendant failed to file a timely appeal from the judgment. *People v. Morrison,* 298 Ill. App. 3d 241 (1998). An appeal from a sentence entered upon revocation of probation does not revive voidable errors in a guilty plea proceeding. *Morrison,* 298 Ill. App. 3d 241; *People v. Stueve,* 66 Ill. 2d 174 (1977).

Here, the State concedes that it was error for the trial court to impose a street value fine without evidence of the value of the methamphetamine manufacturing chemicals as required by statute. See *People v. Lewis,* 234 Ill. 2d 32 (2009) (providing that it is error for a trial court to ignore the statutory

mandate that the street value fine be based upon evidence of the value of the controlled substance). Nonetheless, we do not have jurisdiction to review the issue because the defendant failed to file a timely appeal from the judgment at the time it was entered. See *Morrison,* 298 Ill. App. 3d 241 (holding that the appellate court lacked jurisdiction to review a public defender fee that was erroneously implemented without the statutorily mandated evidentiary hearing because the defendant did not perfect an appeal from the order).

II. $5 Credit

The defendant requests for the first time on appeal $5 *per diem* credit for 652 days spent in presentence custody to be applied against her total fines, fees, and costs. Neither party raises any issue as to the propriety of the defendant's 652 days of sentencing credit. Therefore, on appeal, we address only the defendant's request for monetary credit.

Pursuant to section 110--14 of the Code of Criminal Procedure of 1963, a defendant who is incarcerated on a bailable offense and does not supply bail and is assessed a fine on the 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 (West 2008). Sentencing upon revocation of probation is sentencing upon a conviction and is within the purview of section 110--14 of the Code. *People v. Leggans,* 140

Ill. App. 3d 268 (1986); *People v. Watson,* 318 Ill. App. 3d 140 (2000). Therefore, a defendant earns the $5 *per diem* credit for any time that he was incarcerated pursuant to a petition to revoke his probation until sentencing. *People v. Grubbs,* 405 Ill. App. 3d 187 (2010).

The section 110--14 $5 *per diem* credit is conferred in mandatory terms subject only to the defendant's application. *Lewis,* 234 Ill. 2d 32. The defendant's application for the $5 *per diem* credit may be raised at any time and at any stage. *People v. Caballero*, 228 Ill. 2d 79 (2008). A defendant may apply for the credit for the first time on appeal. *People v. Woodard,* 175 Ill. 2d 435 (1997).

The section 110--14 monetary credit is only applicable to fines and does not apply to other court-ordered costs or fees. *People v. Littlejohn,* 338 Ill. App. 3d 281 (2003). In no case shall the credit exceed the amount of the fine. 725 ILCS 5/110--14 (West 2008).

Here, the defendant is entitled to $5 *per diem* credit for the 414 days that she initially spent in presentence incarceration on her original charges, from August 1, 2005, until she was released on probation on September 18, 2006. She is also entitled to credit for the time she spent in presentence incarceration pursuant to the petition to revoke her probation. However, she is not entitled to credit for time served on any

unrelated offenses. See *People v. Woznick,* 209 Ill. App. 3d 1061 (1991) (holding that the defendant was not entitled to sentencing credit for time served in custody on an unrelated charge).

In this case, the mittimus indicates a portion of the defendant's sentencing credit began on October 1, 2008, but the docket sheet indicates that the defendant was not taken into custody pursuant to the petition to revoke probation until October 24, 2008. We note that the record indicates that the defendant was convicted in Missouri for driving while her license was revoked and was sentenced to six months of detention on September 28, 2008. However, the defendant is not entitled to monetary credit in this case for time served in custody on unrelated charges.

Accordingly, we remand this case to the trial court to determine the appropriate amount of $5 *per diem* credit to award the defendant for presentence incarceration pertaining to the petition to revoke probation in addition to the 414 days that she served prior to probation. No credit shall be given for time served on unrelated charges. Also, the total amount of credit shall not exceed the amount of fines and is not to be applied to costs or fees.

III. Miscalculation

The defendant argues that the trial court miscalculated the total amount of fines, fees, and costs on the criminal cost sheet

by an additional $1,000, which was reproduced in the court's order. The State concedes the error. However, the State argues that we do not have jurisdiction to address this issue because the defendant did not file a timely appeal from the September 18, 2006, order that implemented the fines, fees and costs. We agree.

However, we note that the trial court retains jurisdiction to consider requests to correct nonsubstantial matters, such as amending the mittimus, after it has otherwise relinquished jurisdiction. *People v. White,* 357 Ill. App. 3d 1070 (2005). We further note that a *nunc pro tunc* order may be used to correct clerical errors. *White,* 357 Ill. App. 3d 1070. On remand, the defendant may wish to present her request for a correction to her total fines, fees, and costs to the trial court.

CONCLUSION

We, therefore, remand this case with directions for the trial court to determine the appropriate amount of monetary credit to be awarded to the defendant against her fines. The judgment of the Will County circuit court is otherwise affirmed.

Affirmed and remanded with directions.