

NOTICE
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2011 IL App (4th) 100368-U

Filed 11/4/11

NO. 4-10-0368

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
SHAMERE L. DOUGLAS,)	No. 08CF1917
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred by awarding defendant 188 days of sentence credit because he was simultaneously serving a 20-year sentence in an unrelated case. Because defendant was not entitled to the 188 days of sentence credit, this court need not address his argument that he is entitled to \$5-per-day credit against his \$200 genetic-marker-grouping-analysis fee and \$5 drug-court-program assessment.

¶ 2 In March 2009, defendant, Shamere L. Douglas, as part of a partially negotiated guilty plea, pleaded guilty to aggravated battery, a Class 2 felony. 720 ILCS 5/12-4(b)(18), 12-4(e)(2) (West 2008). In April 2009, the trial court sentenced him to 10 years' imprisonment with credit for 188 days previously served.

¶ 3 Defendant appeals, arguing he is entitled to a \$5-per-day credit against his fines under section 110-14(a) of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/110-14(a) (West 2008)). We affirm in part, vacate in part, and remand with

directions.

¶ 4 In October 2008, the State charged defendant by information with one count of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2008)) (count I), one count of aggravated battery (720 ILCS 5/12-4(b)(18), 12-4(e)(2) (West 2008)) (count II), and one count of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2008)) (count III). In March 2009, defendant, as part of a partially negotiated guilty plea, pleaded guilty to aggravated battery, a Class 2 felony. Defendant was advised the sentence on count II was mandatorily consecutive to the sentence in Champaign County case No. 07-CF-2074 (unlawful possession with intent to deliver a controlled substance), and that he was eligible, based on his criminal record, for Class X range, nonprobationable. (He absented himself for the sentencing hearing in No. 07-CF-2074, and he was on bond in that case when he committed the instant offense.) In exchange for defendant's plea of guilty, the State agreed to (1) dismiss the two remaining charges and (2) a sentencing cap of 10 years' imprisonment. At the plea hearing, the trial court heard the factual basis, admonished defendant, and accepted the guilty plea.

¶ 5 In April 2009, the trial court sentenced defendant to 10 years' imprisonment to run consecutive to the sentence imposed in Champaign County case No. 07-CF-2074. Further, the court awarded defendant credit for 188 days previously served and ordered him to pay a \$200 genetic-marker-grouping-analysis fee and a \$5 drug-court program assessment.

¶ 6 In May 2009, defendant filed a *pro se* motion for reduction of sentence, arguing (1) section 5-5-3(c)(8) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3(c)(8) (West 2008)) was unconstitutional as applied to Class 2 offenders because it disproportionately punished Class 2 offenders "to the same range of imprisonment as a Class 1

offender who [has] been *** twice convicted of Class 2 or greater offenses," and (2) the trial court erred by considering "his mitigating factors as aggravating factors" at sentencing. At the October 2009 hearing on defendant's *pro se* motion, the trial court informed defendant that he was required to file a motion to withdraw his guilty plea if he wished to challenge his sentence. The court then gave defendant 30 days to confer with his counsel and decide whether he wanted to file the appropriate motion. In April 2010, defendant filed a *pro se* motion for disposition on motion for reduction of sentence, stating (1) he had informed his counsel on numerous occasions that he did "not wish to withdraw his guilty plea," and (2) he wanted to amend his *pro se* motion for reduction of sentence to include the argument that "the court erroneously believed that consecutive sentences were mandatory." In April 2010, the court denied defendant's *pro se* motion for reduction of sentence, noting defendant has "continued to indicate he does not wish to file" a motion to withdraw his guilty plea.

¶ 7 This appeal followed.

¶ 8 Defendant argues he is entitled to a \$5-per-day credit against his \$200 genetic-marker-grouping-analysis fee and \$5 drug-court-program assessment pursuant to section 110–14(a) of the Criminal Procedure Code (725 ILCS 5/110-14(a) (West 2008)). In contrast, the State argues (1) defendant is not entitled to the \$5-per-day credit against his fines, and (2) the trial court erred in awarding him 188 days' credit for time previously served because he was imprisoned on a sentence for an unrelated offense, and the sentence in this case was ordered to run consecutive to the sentence in the unrelated case.

¶ 9 At defendant's first appearance in October 2008, the trial court noted defendant was previously sentenced *in absentia* to 20 years in prison in case No. 07-CF-2074. Conse-

quently, the court ordered him to be transported to the Department of Corrections and reiterated that defendant was not being held for the "appearance of counsel date" but was instead being "ordered transported on the mittimus as executed by Judge Ladd." Because defendant was serving a 20-year sentence in an unrelated case simultaneously to being in custody for the current charge, the State argues defendant is not entitled to the 188 days of sentencing credit and the \$5-per-day credit against his fines. Therefore, the State asks this court to vacate the trial court's order that provided defendant with 188 days' sentence credit.

¶ 10 Section 5-8-7(b) of the Unified Code (730 ILCS 5/5-8-7(b) (West 2008)) states, in pertinent part, as follows:

“The offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for time spent in custody as a result of the offense for which the sentence was imposed.”

¶ 11 The purpose of the credit-against-sentence provision contained in section 5-8-7(b) is to ensure defendants do not ultimately remain incarcerated for periods in excess of their eventual sentences. *People v. Latona*, 184 Ill. 2d 260, 270, 703 N.E.2d 901, 906 (1998).

¶ 12 Section 5-8-4(e)(4) of the Unified Code (730 ILCS 5/5-8-4(e)(4) (West 2008)) governs the calculation of consecutive sentences and controls over section 5-8-7(b). *Latona*, 184 Ill. 2d at 270, 703 N.E.2d at 907. Section 5-8-4(e)(4) requires the Department of Corrections to treat consecutive sentences as a "single term" of imprisonment and specifies that the offender shall be credited against "the aggregate *** term of imprisonment" rather than some separate portion of that term. 730 ILCS 5/5-8-4(e)(4) (West 2008). "Since consecutive sentences are to

be treated as a single term of imprisonment, it necessarily follows that defendants so sentenced should receive but one credit for each day actually spent in custody as a result of the offense or offenses for which they are ultimately sentenced." *Latona*, 184 Ill. 2d at 271, 703 N.E.2d at 907.

¶ 13 At defendant's first appearance in the present case, the trial court noted defendant was previously sentenced *in absentia* to 20 years' imprisonment in No. 07-CF-2074. The court ordered defendant to be transported to the Department of Corrections on the sentencing judgment from that case. Shortly thereafter, the court scheduled a date for appearance of counsel in the present case. The court emphasized that defendant was "still ordered transported to the Department of Corrections on [case No.] 07-CF-2074." The court then reiterated that defendant was not to be held for the appearance-of-counsel date, and he was ordered transported on the sentencing judgment as executed in case No. 07-CF-2074.

¶ 14 The trial court sentenced defendant to 10 years' imprisonment to run *consecutive* to the sentence imposed in case No. 07-CF-2074 and awarded him credit for 188 days previously served, as reflected in the presentence report. Therefore, defendant was given 188 days credit for time he was incarcerated under case No. 07-CF-2074.

¶ 15 Defendant is not entitled to the 188 days of sentencing credit in the present case because the record reveals he was transported to the Department of Corrections to serve a sentence in an unrelated case. Allowing defendant to have the 188 days of sentence credit would essentially award him double credit due to the nature of his consecutive sentences. Accordingly, we vacate the trial court's order insofar as it awards defendant 188 days of sentence credit. See *People v. Roberson*, 212 Ill. 2d 430, 440, 819 N.E.2d 761, 767 (2004) ("a sentence in conflict

with a statutory guideline such as [section 5-8-7(b) of the Unified Code (730 ILCS 5/5-8-7(b) (West 2008))] is void and may be challenged at any time"); see also *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995) (The appellate court had authority to correct the trial court's sentencing order imposing concurrent terms as void.).

¶ 16 We note defendant cites cases where \$5-per-day credit against fines for time served was awarded to the defendants despite the defendants also being in custody on an unrelated offense; however, those cases did not discuss the unavailability of double sentence credit for simultaneous custody when a consecutive sentence is imposed. See *People v. Blakney*, 375 Ill. App. 3d 554, 560-61, 873 N.E.2d 1007, 1013 (2007) (the First District found the defendant was entitled to \$5-per-day credit for time he spent in custody awaiting sentence, which included time the defendant was transported back to prison for violating a previously imposed mandatory-supervised-release term); see also *People v. Spencer*, 347 Ill. App. 3d 483, 491, 807 N.E.2d 1228, 1235 (2004) (the Fifth District found the defendant was entitled to \$5-per-day credit for simultaneous custody because he would not be entitled to any credit against his fines if he was incarcerated solely on the original, unrelated offense).

¶ 17 Because defendant is not entitled to the 188 days sentencing credit, we need not address defendant's argument that he is entitled to \$5-per-day credit against his \$5 drug-court-program assessment and his \$200 genetic-marker-grouping-analysis fee (see *People v. Marshall*, 242 Ill. 2d 285, 296, 950 N.E.2d 668, 676 (2011) (the purpose of the DNA analysis fee is to cover the cost of the DNA analysis); see also *People v. Guadarrama*, 2011 IL App (2d) 100072, ¶ 13, 2011 WL 3594017 (the DNA-analysis assessment constitutes a fee)).

¶ 18 For the reasons stated, we vacate the trial court's judgment insofar as it awards

defendant 188 days sentencing credit for time spent in custody; we otherwise affirm. We remand this case with directions to amend the sentencing judgment accordingly. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed in part, vacated in part, and cause remanded with directions.