

NOTICE
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2011 IL App (4th) 100429-U

Filed 11/30/11

NO. 4-10-0429

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	McLean County
REGINALD DWAYNE WOODS,)	No. 07CF176
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Because the factual bases of some of defendant's *pro se* posttrial claims of ineffective assistance were unspecified, the trial court should have inquired into the factual bases in a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1994).

(2) Because there was no substantial change in the nature of defendant's criminal objective from the time he committed the Class X felonies to the time he committed the Class 3 felony, the trial court had statutory authority to impose extended terms of imprisonment only for the Class X felonies, not for the Class 3 felony.

¶ 2 In a bench trial, the trial court convicted defendant, Reginald Dwayne Woods, of armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)), armed violence (720 ILCS 5/33A-2(a) (West 2006)), and aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)). For each of these offenses, the court imposed an extended term of imprisonment: 50 years for armed robbery, 50 years for armed violence, and 10 years for aggravated battery, ordering that the sentences run concurrently.

¶ 3 Defendant appeals from the judgment for three reasons. First, he argues the trial court failed to perform an adequate inquiry into his *pro se* allegations of ineffective assistance of counsel, as *Krankel* and its progeny required. Second, he argues the court failed to allow him a \$5-per-day credit for the time he spent in presentence custody—a credit that should have reduced the \$10 drug-court assessment to zero. Third, he argues the court exceeded its statutory authority by imposing an extended term of imprisonment for the conviction of aggravated battery.

¶ 4 We find merit in all three arguments. Therefore, we affirm the trial court's judgment as modified, and we remand this case with directions. We modify the 10-year term of imprisonment for aggravated battery by making it a 5-year term of imprisonment, the maximum nonextended-term sentence for that offense. We further modify the sentence by allowing defendant \$10 of credit against the \$10 drug-court assessment. Finally, we remand this case with directions to issue an amended sentencing order reflecting these two changes and to conduct the preliminary investigation that *Krankel* requires.

¶ 5 I. BACKGROUND

¶ 6 A. The Indictment

¶ 7 The indictment had six counts: count I, armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)); count II, armed violence (720 ILCS 5/33A-2(a) (West 2006)); count III, aggravated battery (720 ILCS 5/12-4(a) (West 2006)); count IV, aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)); count V, unlawful restraint (720 ILCS 5/10-3(a) (West 2006)); and count VI, attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1 (West 2006)).

¶ 8 Because the State *nolle prosequi*ed count VI on March 25, 2008, and because the trial court entered a judgment of conviction only on counts I, II, and IV, the latter three counts are the

only ones that need concern us in this appeal.

¶ 9 All three of the counts, counts I, II, and IV, accused defendant of committing offenses on January 29, 2007, in McLean County. Count I charged him with armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)), a Class X felony (720 ILCS 5/18-2(b) (West 2006)), "in that he knowingly took property, a cell phone, from the person or presence of Jessica Piper by the use of force or threatening the imminent use of force, while armed with a dangerous weapon, a knife."

¶ 10 Count II charged him with armed violence (720 ILCS 5/33A-2(a) (West 2006)), a Class X felony (720 ILCS 5/33A-3(a-5) (West 2006)), "in that he knowingly[,] while armed with a dangerous weapon, a knife, *** committed the offense of unlawful restraint."

¶ 11 Count IV charged him with aggravated battery (720 ILCS 5/12-4(b)(1) (West 2006)), a Class 3 felony (720 ILCS 5/12-4(e)(1) (West 2006)), "in that he knowingly and without legal justification caused bodily harm, cuts to the hands, to Jessica Piper by cutting her with a deadly weapon, a knife."

¶ 12 B. The Bench Trial (February and March 2008)

¶ 13 1. *Defendant Borrows Piper's Phone in Order To Cancel an "Art Class"*

¶ 14 Jessica Piper (who, in 2001, was convicted of aggravated battery) testified that in the daytime on January 29, 2007, she was outside her apartment when she was approached by a man whom she knew by his street name, "Sky High." This man, as she described him, had a dark complexion and was about 6 feet 1 inch tall. He had "braids and beads" and "was wearing a black coat with a big symbol on the back of it." She identified defendant, in court, as this man.

¶ 15 In January 2007, Piper did not know defendant's actual name, but she was acquainted with him: he was "Sky High." He approached her on this occasion and requested to use her cell

phone, purportedly to cancel an art class. She allowed him to use her phone, a T-mobile cell phone. (Piper told the police that a person named Germaine was present when defendant requested to use Piper's phone. At trial, however, Piper testified that only she and defendant were present.)

¶ 16 According to a stipulation, signed by both parties, People's exhibit No. 23 was a business record from T-Mobile indicating that on January 29, 2007, at 3:23 p.m., a call was made from Piper's phone number to (309) 828-2860. This was the phone number of Collaborative Solutions Institute in Bloomington.

¶ 17 Cheryl Gaines testified she was a counselor at the Institute and that in January 2007, defendant was enrolled in a program at the Institute, the AVERT program. He was in the "domestic violence-abuser group," which met every Monday at 5:30 p.m. Although a court order required him to participate in this program, he called in on January 29, 2007, to say he would miss the session that day. And indeed he was absent that day.

¶ 18 *2. Piper Sells a Bag of Cocaine to Defendant and Then Denies Him a "Front," With Adverse Consequences for Her*

¶ 19 Piper testified that in the evening of January 29, 2007 (later during the same day when defendant requested to use her phone), a white man named Mike and a black man whose name she did not know stopped by her apartment and she let them in and sold them each a bag of crack cocaine. (Piper admitted initially lying to the police by telling them that Mike's name was Jerome. And until the day of trial, she never divulged that she had sold cocaine in her apartment.) The two men smoked the crack cocaine in her apartment while she snorted some cocaine. (Piper admitted lying to the police by telling them she only had smoked cannabis.) While the two men were still in her apartment, defendant arrived. Piper sold him a bag of crack cocaine as well, which he likewise

smoked in her apartment.

¶ 20 After Mike and the unidentified black man finished smoking their cocaine, they asked Piper, " 'Can I get a front?' "—meaning a free bag of cocaine. She told them no. Then defendant begged for a front, offering to leave his wallet as collateral until he fetched the \$20. She told him no, also. The three men left, and Piper locked the door behind them and sat down on the couch.

¶ 21 Soon afterward, Piper heard a knock on her door. It was defendant again. As soon as she let him in, he ran into the kitchen and grabbed a knife. He wrapped his arms around her from behind, telling her, " 'Give me that bag,' " and he cut her on the neck with the knife. (Piper admitted lying to the police by telling them that defendant had said, " 'Give me the money,' " instead of " 'Give me the bag.' ")

¶ 22 Piper gave defendant a bag of crack cocaine. He had her sit on the couch, and he sat down beside her, telling her, " 'Just don't do nothin' stupid.' " At his direction, she pressed a sock against her neck, to stop the bleeding. He put the knife in his coat pocket and smoked the cocaine he had taken from her by force.

¶ 23 The prosecutor asked Piper:

"Q. After he smoked the crack, what did he do then?

A. I tried to get away the first time.

Q. What do you mean you tried to get away?

A. I tried to run to the front door and unlock the door, but we was struggling and stuff.

Q. When you struggled, did anything happen to you?

A. I think he cut my hand, like, on the side.

Q. Okay. What do you mean? You think he cut your hand?

A. I think when we were struggling, I believe that he cut my hand right here—(indicating).

Q. Did you have an injury to your hand?

A. Yes."

After this scuffle, defendant pointed the blade of the knife at Piper's eye. She "just settled down" and obeyed his command to sit back down on the couch.

¶ 24 Piper then tried to escape again. She made a dash for the back door of the apartment, but defendant caught her by the hood of her coat, stopping her. She testified: "He had the knife in his left hand, and he made me open the back door to make sure there wasn't nobody out there, and he demanded my phone. That way, I don't call the cops." She handed over to him her T-Mobile cell phone, which she never received back. He prevented her from leaving through the back door.

¶ 25 When defendant went into the bathroom, however, Piper escaped through the front door. Defendant then came out of the apartment, put the knife in his pocket, and told Piper he would get help for her. He went left down Washington Street and never returned.

¶ 26 Piper ran through an alley and onto Front Street, where someone called the police and an ambulance. At the hospital, medical personnel closed the cut on her neck with staples.

¶ 27 Piper subsequently identified defendant in a photographic lineup.

¶ 28 *3. Kandase Singletary's Testimony*

¶ 29 Kandase Singletary testified she used to be a friend of Jessica Piper's sister, Rebecca Piper, and that the two sisters, Jessica and Rebecca, lived in the same apartment building (though not in the same apartment). The evening of January 29, 2007, Singletary visited Rebecca, and as she

was leaving Rebecca's apartment, she saw three men, whom she did not know, leaving Jessica's apartment. It was dark out, but Singletary was "pretty sure" all three men were black.

¶ 30 Then Singletary saw one of the three men run back to Jessica's apartment. The prosecutor asked Singletary:

"Q. Kandase, you had testified earlier that it was dark outside.

Is it possible that the races of the three men could have been different than three black males?

A. Maybe. But I'm pretty sure it was a black man that ran back to her door."

¶ 31 According to Singletary, Jessica opened the door of her apartment slightly, looked to see who it was, let the man in, and closed the door behind him. Soon afterward, Singletary heard Jessica scream. Because Jessica, however, was a habitual ranter and screamer—a "drama queen"—Singletary did not think much of it.

¶ 32 *4. The Police Find the Knife*

¶ 33 The police found the kitchen knife, People's exhibit No. 1, on Washington Street. No fingerprints were on the knife, but the blade appeared to have bloodstains on it. With a swab, the police collected a sample from one of the stains. Buccal swabs also were collected from Jessica Piper and defendant.

¶ 34 *5. DNA Testing of the Knife*

¶ 35 Deborah Minton was a forensic scientist at the Illinois State Police crime laboratory. She testified she had performed tests on the swab taken from People's Exhibit No. 1 and that the tests revealed a "mixed DNA profile." The DNA profile turned out to be a combination of two people,

one male and the other female. The female profile was the "major profile," the male profile "minor." The female profile matched the profile of Jessica Piper. As for the male profile, Minton could say only that defendant could not be excluded as having contributed to that profile. Minton explained that "there were no foreign alleles between Reginald Woods's DNA profile and the multiple genotypes that were present in [the] minor profile." Nevertheless, because Minton was unable to "go to one genotype per locus, *** [she] f[e]ll back and use[d] the words 'he cant' be excluded' rather than 'a match.' "

¶ 36 Minton further explained: "In this instance, because of that minor profile was of such a lower intensity, I did a statistical analysis on only seven of the 13 amplified loci. So the statistics of the minor profile were based on those seven loci, only. Approximately 1 in 88 million black, or 1 in 110 million white, or 1 in 640 million Hispanic unrelated individuals cannot be excluded from having contributed to that minor male profile."

¶ 37 *6. The Verdict*

¶ 38 On March 26, 2008, after taking the matter under advisement, the trial court entered a written order finding defendant guilty of count I, armed robbery; count II, armed violence; count IV, aggravated battery based on bodily harm; and count V, unlawful restraint. The court did not enter a conviction on count V, however, the charge of unlawful restraint, given that the charge of armed violence (count II) was predicated on the unlawful restraint. The court found defendant not guilty of count III, aggravated battery based on great bodily harm.

¶ 39 In its order, the trial court found that Jessica Piper was a credible witness and that her identification of defendant as the culprit was believable. Also, the court found that Piper's testimony was corroborated by the physical evidence, the testimony of police officers, Singletary's testimony,

and the DNA evidence.

¶ 40 C. Defendant's Letter of March 30, 2008, to the Trial Court

¶ 41 On March 30, 2008, defendant wrote the trial court a letter (filed on April 3, 2008) asking the court to reconsider its guilty verdicts. In his letter, defendant said he had "consistently complained of," and "[had] been subjected to," ineffective assistance of counsel. We quote from his brief: "Mr. Woods's allegations included that counsel had not consulted with him prior to going to trial, that trial counsel had failed to 'acknowledge' that Jessica Piper's sister should have been called where her testimony was 'pivotal' to the defendant's case, and that defense counsel did not hire an expert to 'confirm or deny the State's DNA findings.' "

¶ 42 D. Defendant's *Pro Se* Motion for a New Trial

¶ 43 On April 8, 2008, defendant filed a *pro se* motion for a new trial. In this motion, he echoed the allegations of ineffective assistance that he had made in his letter of March 30, 2008, to the trial court.

¶ 44 E. Defense Counsel's Motion for a New Trial

¶ 45 On May 13, 2008, an assistant public defender, John L. Wright, Jr., filed a motion for a new trial on two grounds: (1) the insufficiency of the evidence and (2) denial of due process and equal protection. Wright had represented defendant in the trial.

¶ 46 F. Hearing on the Motion for a New Trial

¶ 47 On May 28, 2008, the trial court held a hearing on defendant's motion for a new trial. At the beginning of the hearing, in which defendant was personally present, the court observed:

"There is pending a motion for new trial. The motion filed by
Counsel was filed on May 13, 2008. There was also filed a *pro se*

Motion For New Trial on April 8, 2008.

Mr. Wright, have you reviewed the pro se motion?

M[R]. WRIGHT: I have, your Honor. I've discussed that with Mr. Woods. I will also advise Mr. Woods, we discussed the motion that I filed on May 13, and that's the motion we would intend to proceed on.

THE COURT: The pro se Motion For New Trial, then, according to Court Rule, and, apparently, according to your indications, is to be stricken; correct?

MR. WRIGHT: That would be correct, Judge."

¶ 48 After hearing arguments on Wright's motion for a new trial, the trial court denied the motion, concluding that "the evidence in this case rose well above the threshold establishing proof beyond a reasonable doubt."

¶ 49 The trial court further stated:

"The Court has also reviewed the Motion For New Trial which was filed by the Defendant; and while that motion was stricken by virtue of the fact that there are ineffective-assistance-of-counsel claims, the record ought to reflect that I have reviewed those claims, and find them to be unpersuasive.

The evidence in this case is such that no fair criticism could be leveled at defense counsel for failing to do anything other than what he did, quite ably and competently, in terms of challenging the

testimony of the complaining witness; for example, trying to identify those areas of weakness in the complaining witness's testimony, and doing what a competent attorney would do in those circumstances. The indications that defense counsel did not consult with the Defendant are inconsistent with the Court's appraisal of counsel's awareness of the issues, awareness of the points of which the defense would be basically able to critique the State's evidence; and, consequently, I am making a finding that the Defendant was in full receipt of effective assistance of counsel. Having said that, the Motion For a New Trial is denied."

¶ 50 G. The Imposition of the Sentence

¶ 51 On May 28, 2008, immediately after denying the motion for a new trial, the trial court held a sentencing hearing, in which the court imposed the following sentences of imprisonment for counts I, II, and IV: 50 years for armed robbery, 50 years for armed violence, and 10 years for aggravated battery.

¶ 52 Against these sentences, the trial court found that defendant was entitled to receive credit for the time he spent in presentence custody: February 7, 2007, to May 28, 2008.

¶ 53 H. The "Drug-Court Fee"

¶ 54 Also on May 28, 2008, the circuit court served a notice on defendant that he had been assessed with various fines and costs, including a "drug court fee" in the amount of \$10. See 55 ILCS 5/1101(d-5) (West 2006).

¶ 55 I. Amendments of the Sentencing Order

¶ 56 On May 29, 2008, the trial court added some written notations to the sentencing order. Both of the notations, which the court initialed, stated that the sentences were extended sentences.

¶ 57 On July 23, 2008, the trial court issued an amended sentencing order, correcting some misnumbered counts.

¶ 58 J. Motion To Reduce the Sentences

¶ 59 On July 3, 2008, Wright filed a motion to reduce the sentences. The proof of service in the motion says: "The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record of all parties to the above cause by delivering such to their offices on the 3 day of July, 2008."

¶ 60 Ten months later, on May 13, 2010, a hearing was held on the motion to reduce the sentences. The prosecutor did not dispute the timeliness of the motion to reduce the sentence. Instead, he contested the motion on its merits. He argued as follows:

"Judge, I would provide, I suppose, what would be characterized as the rote State response to such motions, but it's, nevertheless, appropriate and sincere; and that is the Court has already heard this evidence; the Court has already reviewed the PSI [(presentence investigation report)]; the Court heard the evidence at trial, and the evidence of mitigation at sentencing. The Court's considered the Defendant's prior record and the seriousness of the offenses, and it spent a good deal of time, I believe, in crafting the appropriate sentence. I believe the Court has done that, and has already given the appropriate sentence; and the People would ask that

the Motion to Reconsider be denied."

¶ 61 After hearing arguments, the court denied the motion for a reduction of the sentence.

¶ 62 Defendant appeals from the denial of this motion. He filed his notice of appeal on June 9, 2010.

¶ 63

II. ANALYSIS

¶ 64

A. Our Subject-Matter Jurisdiction

¶ 65 Although neither party questions our subject-matter jurisdiction in this case, we have a duty to make sure, on our own initiative, that we have subject-matter jurisdiction. *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009). We raise the jurisdictional question because there were two alternative deadlines for filing an appeal: (1) 30 days after entry of the final judgment or (2) 30 days after disposition of a timely motion directed against the judgment. See Ill. S. Ct. R. 606(b) (eff. March 20, 2009). The judgment in a criminal case is the actual pronouncement of the sentence (as opposed to the entry of the written sentencing order) (*People v. Allen*, 71 Ill. 2d 378, 381 (1978)), and the trial court pronounced the sentences on May 28, 2008. Thirty days after May 28, 2008, was June 27, 2008, the date by which defendant had to file either a notice of appeal or a motion directed against the judgment. See Ill. S. Ct. R. 606(b) (eff. March 20, 2009); 730 ILCS 5/5-8-1(c) (West 2008). He filed neither document by that date. He filed his motion for reduction of the sentences on July 3, 2008, and his notice of appeal on June 9, 2010.

¶ 66

Nevertheless, in the hearing on defendant's motion for reduction of the sentences, the State did not contest either the timeliness of the motion or the trial court's jurisdiction to hear it. Instead, the State argued that the court should deny the motion on its merits. In making arguments for and against a reduction of the sentences, the parties proceeded on the assumption that the

sentences could potentially be reduced and, hence, that the sentences were not final. By actively proceeding on that assumption, the parties revested the trial court with personal and subject-matter jurisdiction. See *People v. Bannister*, 236 Ill. 2d 1, 10 (2009); *People v. Lane*, 2011 IL App (3d) 080858, ¶¶ 16-17. As a result, the trial court had jurisdiction to deny the motion for reduction of the sentences on May 13, 2010 (see *Bannister*, 236 Ill. 2d at 10; *Lane*, 2011 IL App (3d) 080858, ¶¶ 16-17), and defendant filed a timely notice of appeal within 30 days thereafter, on June 9, 2010 (see Ill. S. Ct. R. 606(b) (eff. March 20, 2009); 730 ILCS 5/5-8-1(c) (West 2008)). It follows that we have subject-matter jurisdiction over this appeal.

¶ 67

B. The *Krankel* Theory

¶ 68

1. *Did Defendant Withdraw His Pro Se Claims of Ineffective Assistance By Withdrawing His Pro Se Motion for a New Trial?*

¶ 69

To reiterate, on March 30, 2008, defendant wrote the trial court a letter requesting the court to change the verdicts from guilty to not guilty, and one of his stated grounds for this request was that he had received ineffective assistance of counsel from one of his appointed attorneys, Wright. We need consider only the allegations of ineffective assistance that defendant discusses in his brief: the allegations that "counsel had not consulted with him prior to going to trial, that trial counsel had failed to 'acknowledge' that Jessica Piper's sister should have been called where her testimony was 'pivotal' to the defendant's case, and that defense counsel did not hire an expert to 'confirm or deny the State's DNA findings.' "

¶ 70

On April 28, 2008, defendant repeated those allegations of ineffective assistance in a *pro se* motion for a new trial.

¶ 71

On May 13, 2008, Wright filed a motion for a new trial, on defendant's behalf.

¶ 72 On May 28, 2008, the trial court held a posttrial hearing, in which defendant was present personally and by his appointed attorney, Wright. It was agreed that the posttrial hearing would be solely on Wright's motion for a new trial and that defendant's *pro se* motion for a new trial would be stricken, since the *pro se* motion included allegations of ineffective assistance and it would have been a conflict of interest for Wright to argue his own ineffectiveness. See *People v. Lawton*, 212 Ill. 2d 285, 296 (2004).

¶ 73 The State contends that by withdrawing his *pro se* motion for a new trial, defendant withdrew his allegations of ineffective assistance. We disagree. The letter of March 30, 2008, is a document separate and distinct from the *pro se* motion for a new trial filed on April 28, 2008, and it requests different relief: a judgment notwithstanding the verdict. Unlike the *pro se* motion for a new trial, the letter was never declared to be stricken.

¶ 74 And, besides, even if the allegations of ineffective assistance had been set forth exclusively in the *pro se* motion for a new trial, the trial court still would have been obliged to make the preliminary inquiry that *Krankel* and its progeny required, because, as the supreme court has stated, "a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention" and defendant would have done so by filing the *pro se* motion—even though the *pro se* motion subsequently was stricken so that he could be represented in the posttrial hearing. *People v. Moore*, 207 Ill. 2d 68, 79 (2003). A defendant should not have to choose between representation and a *Krankel* inquiry.

¶ 75 *2. The Preliminary Investigation That Krankel and Its Progeny Require*

¶ 76 If, after being convicted at trial, a defendant communicates to the trial court, by any means (*Moore*, 207 Ill. 2d at 79), a claim that he has received ineffective assistance of counsel, the

court must make a preliminary inquiry, to determine if the claim is based on a possible neglect of the case (*id.* at 77-78). Sometimes the claim will state its factual basis, but probably more often than not, the claim will be vague. If the claim does not state its factual basis, the court may not ignore the claim or dismiss it out of hand. Instead, the court must find out the factual basis of the claim (if the claim has a factual basis). *Id.* at 78. The logical way to do so is to ask the defendant. *Id.* Follow-up questions to defense counsel are permitted as well. *Id.* Also, in performing its preliminary inquiry, the court may consult the record and rely on its own knowledge of defense counsel's performance in the case. *Id.* If the claim, with its factual basis sufficiently elaborated, shows a possible neglect of the case, the court should appoint substitute counsel to pursue the claim in a subsequent hearing. *Id.* If, on the other hand, the claim does not show a possible neglect of the case or if the claim pertains merely to trial strategy, the court need not appoint substitute counsel. *Id.*

¶ 77

3. *Krankel Applied to This Case*

¶ 78 Again, the three claims of ineffective assistance are that (1) defense counsel failed to consult with defendant before trial, (2) defendant failed to call Rebecca Piper as a witness at trial, and (3) defense counsel failed to "hire an expert to 'confirm or deny the State's DNA findings.'" The third claim states its factual basis, and it does not show a possible neglect of the case. Defense counsel did not have to hire an expert merely for the sake of hiring an expert. Unless defense counsel had a reason to question Minton's conclusions, he had no reason to hire a DNA expert.

¶ 79 The other two claims call for some exploration, though, because their factual bases are unspecified. Was a defense omitted at trial because of this alleged failure to consult with defendant before the trial? What would Rebecca Piper have said on the stand, and how does

defendant know what she would have said? Maybe she would have testified she saw defendant intercept the real culprit in the hallway and try to wrench the knife out of his hand. One never knows unless one asks—and the trial court did not ask.

¶ 80 C. Monetary Credit for Time Spent in Presentence Custody

¶ 81 Defendant points out that under our decision in *People v. Sulton*, 395 Ill. App. 3d 186, 193 (2009), the \$10 drug-court assessment was a fine, rather than a fee, because he was not prosecuted in drug court. He contends that because he spent 476 days in presentence custody, the \$5-per-day credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2006)) should entirely offset this fine of \$10. The State agrees, and so do we.

¶ 82 D. The Extended-Term Sentence for Aggravated Battery

¶ 83 Generally, the trial court may impose an extended-term sentence pursuant to section 5-8-2(a) of the Unified Code of Corrections (the Code) (730 ILCS 5/5-8-2(a)(West 2006)) only on the charged offense that is in the most serious class of felony. *People v. Collins*, 366 Ill. App. 3d 885, 900 (2006). An exception exists if offenses of differing classes are separately charged and arise from " 'unrelated courses of conduct.' " *Id.* (quoting *People v. Coleman*, 166 Ill.2d 247, 257 (1995)). Offenses arise from unrelated courses of conduct if, from one offense to the other, " 'there was a substantial change in the nature of the defendant's criminal objective.' " *Id.* (quoting *People v. Bell*, 196 Ill. 2d 343, 354 (2001)). Thus, if the defendant committed the lesser and greater offenses *not* as a single course of conduct, the trial court may impose an extended term of imprisonment for the lesser offense. *Id.*

¶ 84 Did defendant commit the aggravated battery (count IV) as part of an unrelated course of conduct? In other words, when he cut Piper on the hand with the knife as she tried to get to the

front door, was there a substantial change in the nature of his criminal objective from when he took her cell phone (count I) or unlawfully restrained her (count II)? In our *de novo* review (*People v. Thompson*, 209 Ill. 2d 19, 22 (2004)), we see no change at all in his criminal objective, let alone a substantial change. When he compelled Piper to hand over her cell phone, when he restrained her, and when he cut her hand as she was struggling to get around him and out the front door, he apparently had the same objective: to avoid detection and capture. He did not want Piper summoning help while he was still in or near her apartment. Therefore, the trial court could sentence defendant to extended terms of imprisonment only for the Class X felonies (counts I and II), not for the Class 3 felony (count IV).

¶ 85

III. CONCLUSION

¶ 86 For the foregoing reasons, we affirm the trial court's judgment as modified and remand this case with directions. We modify the 10-year term of imprisonment for aggravated battery by making it a 5-year term of imprisonment, the maximum nonextended-term sentence for that offense. We further modify the sentence by allowing defendant \$10 of credit against the \$10 drug-court assessment. We direct the trial court to issue an amended sentencing order reflecting these changes. We also direct the trial court to conduct the preliminary investigation that *Krankel* requires. We leave it to the trial court to decide, after investigation, whether the claims of ineffective assistance merit a full evidentiary hearing with appointment of new counsel. If the trial court decides that the claims are spurious or pertain only to trial strategy, it need not appoint new counsel and need not hold an evidentiary hearing on the claims.

¶ 87

Affirmed as modified; cause remanded with directions.