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).

2011 IL App (4th) 100495-U

Filed 11/22/11

NO. 4-10-0495

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
CLINTON G. JOHNSON,	)	No. 03CF192
Defendant-Appellant.	)	
	)	Honorable
	)	John B. Huschen,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was entitled to $5-per-day credit against his $100 trauma-center assessment and $1,000 drug assessment for time spent in custody awaiting sentencing.

¶ 2 Following a stipulated bench trial in February 2004, the trial court found defendant, Clinton G. Johnson, guilty of unlawful possession of methamphetamine-manufacturing chemicals (720 ILCS 570/401(d-5) (West 2002)) (count I) and armed violence (720 ILCS 5/33A-2 (West 2002)) (count IV).

¶ 3 In May 2004, the trial court sentenced defendant to concurrent 4 and 15-year prison terms for the possession and armed-violence convictions. The court ordered defendant to pay $1,750 in costs and awarded him credit for 177 days previously served. Defendant appealed his convictions, and this court affirmed. *People v. Johnson*, No. 4-04-0685 (Dec. 7, 2006)

(unpublished order under Supreme Court Rule 23).

¶ 4 In May 2010, defendant *pro se* filed a "motion for pre-sentence credit on bailable offenses," requesting $5-per-day credit against his fines under section 110-14 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/110-14 (West 2004)). Shortly thereafter, the trial court denied defendant's motion because "no fine was assessed against defendant for which the credit could be applied."

¶ 5 Defendant appeals, arguing he was entitled to a $5-per-day credit against his $1,000 drug assessment and a $100 trauma-center assessment. We agree.

¶ 6 I. BACKGROUND

¶ 7 In November 2003, the State charged defendant by information with one count of unlawful possession of methamphetamine-manufacturing chemicals (720 ILCS 570-401(a)(6.6)(A) (West 2002)) (count I), one count of unlawful possession of a controlled substance (720 ILCS 570-402(c) (West 2002)) (count II), and one count of armed violence (720 ILCS 5/33A-2 (West 2002)) (count III) predicated on unlawful possession of methamphetamine-manufacturing chemicals with intent to deliver (720 ILCS 570/401(a)(6.6)(A) (West 2002)). In February 2004, count I was amended in open court to reflect violation of section 401(d-5) of the Illinois Controlled Substances Act (720 ILCS 570/401(d-5) (West 2002)). An additional information was filed charging defendant with armed violence (720 ILCS 5/33A-2 (West 2002)) predicated on unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2002)). Further, the State requested dismissal of count II (unlawful possession of a controlled substance) and count III (armed violence).

¶ 8 Following the February 2004 stipulated bench trial, the trial court found defen-

dant guilty of count I (unlawful possession of methamphetamine-manufacturing chemicals) and count IV (armed violence).

¶ 9 In May 2004, the trial court sentenced defendant to concurrent 4 and 15-year prison terms for the possession and armed-violence convictions. During the sentencing hearing, the following exchange occurred between the clerk and the court regarding costs: "THE COURT: *** Costs? THE CLERK: $1,750." Thereafter, the court ordered defendant to pay $1,750 in costs and awarded him credit for 177 days previously served. Defendant appealed his convictions, and this court affirmed. *People v. Johnson*, No. 4-04-0685 (Dec. 7, 2006) (unpublished order under Supreme Court Rule 23).

¶ 10 In May 2010, defendant *pro se* filed a "motion for pre-sentence credit on bailable offenses," arguing he was entitled to $5-per-day credit (for 177 days) against his assessed fines under section 110-14 of the Criminal Procedure Code (725 ILCS 5/110-14 (West 2004)). The trial court denied defendant's *pro se* motion because "no fine was assessed against defendant for which the credit could be applied."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues he is entitled to $5-per-day credit for 177 days served against his $1,000 drug assessment and $100 trauma-center assessment. The State concedes defendant is entitled to $5-per-day credit against his fines, and we accept the State's concession.

¶ 14 Section 110-14(a) of the Criminal Procedure Code governs the issuance of the $5-per-day credit and provides as follows:

> "Any person incarcerated on a bailable offense who does not

> supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110–14(a) (West 2004).

The statutory right to the $5-per-day credit is mandatory, and a defendant is entitled to this credit despite it not being requested in the trial court. *People v. Woodard*, 175 Ill. 2d 435, 457, 677 N.E.2d 935, 945-46 (1997).

¶ 15 In the present case, the record indicates that (1) defendant was given credit for 177 days in custody prior to sentencing, (2) defendant was assessed a $1,000 drug assessment and a $100 trauma-center assessment, and (3) the trial court failed to give him the $5-per-day credit against the assessed fines.

¶ 16 The drug assessment is a fine subject to reduction by $5-per-day credit pursuant to section 110-14(a) of the Criminal Procedure Code. *People v. Jones*, 223 Ill. 2d 569, 592, 861 N.E.2d 967, 981 (2006). Additionally, the trauma-center assessment is also considered a fine. *Jones*, 223 Ill. 2d at 593, 861 N.E.2d at 981. Because defendant's $1,000 drug assessment and $100 trauma-center assessment are both considered fines, he is entitled to $5-per-day credit against these fines. Accordingly, we remand this case directing the trial court to amend the judgment order to reflect a $5-per-day credit against defendant's fines for the 177 days he spent in custody, *i.e.*, $885.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the trial court's judgment as modified and

remand with directions.

¶ 19 Affirmed as modified and remanded with directions.