

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) 100701-U

Filed 12/29/11

NO. 4-10-0701

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign
KEVIN E. HEMINGWAY,	)	No. 09CF1438
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.  
Presiding Justice Turner and Justice Appleton concur in the judgment.

**ORDER**

¶ 1 *Held:* Where the drug-court assessment is a fine, defendant is entitled to \$5-per-day credit against the fine for time spent in custody as well as a recalculation of the Violent Crimes Victims Assistance Fund fine.

¶ 2 In July 2010, a jury found defendant, Kevin E. Hemingway, guilty of armed robbery (armed with a firearm) (720 ILCS 5/18-2(a)(2) (West 2008)), a Class X felony. In August 2010, the trial court sentenced defendant to 38 years' imprisonment with credit for 376 days previously served. The court ordered defendant to pay "all fines, fees and costs as authorized by statute" and a Violent Crime Victims Assistance Fund (VCVA) assessment. (The circuit clerk's fines and fees sheet indicates defendant was assessed a \$10 arrestee's-medical fee, a \$5 drug-court assessment, and a \$20 VCVA assessment.) Further, the court gave defendant \$1,880 credit for time previously served.

¶ 3 In August 2010, defendant filed a motion to reconsider sentence, arguing his sentence was excessive. In September 2010, the trial court granted defendant's motion to reconsider sentence and reduced his sentence to 35 years' imprisonment. In modifying the sentence, the court stated that "[a]ll the other prior orders will remain in full force and effect[,] including credit for time served [and] financial obligations imposed."

¶ 4 Defendant appeals, arguing (1) the trial court erred by assessing a \$10 arrestee's-medical fee because he did not receive medical treatment during his arrest, (2) he was entitled to \$5-per-day credit against his \$5 drug-court assessment, and (3) his VCVA assessment should be reduced to \$4 because his drug-court assessment was a fine. We affirm in part as modified, vacate in part, and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 In August 2009, the State charged defendant by information with armed robbery (armed with a firearm) (720 ILCS 5/18-2(a)(2) (West 2008)). In July 2010, the jury found defendant guilty of armed robbery. In August 2010, the trial court sentenced him to 38 years' imprisonment with credit for 376 days previously served. The court ordered defendant to pay "all fines, fees and costs as authorized by statute" and a VCVA assessment. (The circuit clerk's fines and fees sheet indicates defendant was assessed a \$10 arrestee's-medical fee, a \$5 drug-court assessment, and a \$20 VCVA assessment.) The court gave defendant \$1,880 credit for time previously served.

¶ 7 In August 2010, defendant filed a motion to reconsider sentence, arguing his sentence was excessive because (1) a lesser sentence would have been adequate punishment; (2) the trial court failed to give adequate consideration to (a) his rehabilitative potential, (b) his

young age, (c) his criminal history, which primarily consisted of convictions for traffic offenses and only one felony conviction, (d) his lack of juvenile adjudications, and (e) the evidence of mitigation presented at sentencing; (3) the imposed sentence was not in line with his criminal history, family situation, economic status, and potential for rehabilitation; and (4) the trial court erred in finding his conduct resulted in great bodily harm to the victim. In September 2010, the trial court granted defendant's motion to reconsider sentence and reduced his sentence to 35 years' imprisonment. After reducing defendant's sentence, the court stated that "[a]ll the other prior orders will remain in full force and effect[,] including credit for time served [and] financial obligations imposed."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Arrestee's-Medical Fee

¶ 11 First, we note that defendant initially argued the trial court erred by assessing a \$10 arrestee's-medical fee because he did not receive medical treatment during his arrest.

However, defendant subsequently withdrew his argument from consideration due to the supreme court's recent decision in *People v. Jackson*, 2011 IL 110615, ¶24, 955 N.E.2d 1164, 1172, in which the supreme court determined that the imposition of the arrestee's-medical fee was authorized regardless of whether the defendant actually received medical services. Because defendant withdrew this argument from our consideration, we need not address this issue.

¶ 12 B. Drug-Court Assessment

¶ 13 Next, defendant argues he was entitled to \$5-per-day credit against his \$10 drug-court assessment. The State concedes defendant is entitled to the \$5-per-day credit against the

drug-court assessment. However, the State notes the record indicates defendant was assessed a \$5 drug-court assessment. In his reply brief, defendant concedes a \$5 drug-court assessment was imposed.

¶ 14 Section 110-14(a) of the Code of Criminal Procedure of 1963 (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 2010).

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 376 days in custody prior to sentencing, (2) the trial court imposed a \$5 drug-court assessment, (3) the court recognized defendant was entitled to a \$5-per-day credit up to \$1,880 against any imposed fines, (4) no credit was offset against defendant's fines, and (5) defendant argues he is entitled to credit against his \$5 drug-court assessment.

¶ 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). Because defendant's \$5 drug assessment is considered a fine, he is

entitled to \$5-per-day credit against this fine. Accordingly, we remand this case directing the trial court to amend the sentencing judgment to reflect a \$5-per-day credit against defendant's \$5 drug-court assessment.

¶ 17 C. VCVA Assessment

¶ 18 Defendant argues his \$20 VCVA assessment should be reduced to \$4 under section 10(b) of the Violent Crime Victims Assistance Act (Act) (725 ILCS 240/10(b) (West 2010)). The State concedes defendant's VCVA assessment should be reduced, and we accept the State's concession.

¶ 19 Pursuant to section 10(c)(2) of the Act, the \$20 VCVA assessment is to be imposed only where the defendant is convicted of a qualifying felony and no other fine is imposed. See 725 ILCS 240/10(c)(2) (West 2010). As the drug-court assessment was imposed here, the \$20 VCVA fine was improperly assessed and must be vacated. Instead, the VCVA fine, which is mandatory, should have been calculated under section 10(b). 725 ILCS 240/10(b) (West 2010); see also *People v. Brown*, 388 Ill. App. 3d 104, 114, 904 N.E.2d 139, 148-49 (2009) (finding "section 10(b) of the [VCVA] is the operative provision here where other fines were imposed"). Therein, the assessment must be calculated as "\$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010). Thus, as the drug-court assessment totaled \$5, the VCVA fine must be set at \$4. This fine is not subject to offset. 725 ILCS 240/10(b) (West 2010); *People v. Jones*, 397 Ill. App. 3d 651, 664, 921 N.E.2d 768, 778 (2009).

¶ 20 Therefore, we vacate the \$20 VCVA fine and direct imposition of a \$4 VCVA fine, which is not subject to \$5-per-day credit.

¶ 21

### III. CONCLUSION

¶ 22 For the reasons stated, this cause must be remanded for an amended sentencing judgment to reflect the \$5 credit toward the drug-court assessment, the vacatur of the \$20 VCVA fine, and the imposition of a \$4 VCVA fine pursuant to section 10(b) of the Act. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed in part as modified and vacated in part; cause remanded with directions.