

NOTICE
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2011 IL App (4th) 100844-U

Filed 11/23/11

NO. 4-10-0844

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
DOMINIQUE A. BLACKSHEAR,)	No. 10CF892
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant's drug-court assessment was a fine, she was entitled to offset by pretrial incarceration credit.
- ¶ 2 In August 2010, defendant, Dominique A. Blackshear, pleaded guilty to one count of theft. In September 2010, the trial court sentenced her to 56 months in prison and awarded her 68 days' credit for time spent in pretrial custody.
- ¶ 3 On appeal, defendant argues she is entitled to a \$5 credit against her drug-court program fine. We affirm as modified and remand with directions.

I. BACKGROUND

- ¶ 4
- ¶ 5 In May 2010, the State charged defendant by information with one count of theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)), alleging she knowingly obtained unauthorized control over property of Kohl's, having a total value in excess of \$300, with the intent to permanently

deprive the owner of the use or benefit of the property.

¶ 6 In August 2010, defendant entered an open guilty plea to the offense of theft. In September 2010, the trial court conducted the sentencing hearing. The presentence report indicated defendant had a history of ordinance violations, traffic offenses, and a prior felony for manufacturing ecstasy. The court noted defendant committed the theft offense while she was on probation and three days before she was to surrender herself for a jail sentence. The court sentenced her to 56 months in prison. The court also awarded her 68 days' credit for time spent in pretrial custody, which "gives her credit for \$340 for any fines that might be imposed."

¶ 7 Defendant filed a motion to reconsider sentence, claiming it was excessive. In October 2010, the trial court denied the motion. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues she is entitled to \$5 credit against her drug-court program fine. We agree.

¶ 10 Section 110-14(a) of the Code of Criminal Procedure of 1963 (Code) states, "[a]ny 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." 725 ILCS 5/110-14(a) (West 2010). The statutory right to the monetary credit is mandatory. *People v. Brown*, 406 Ill. App. 3d 1068, 1084, 952 N.E.2d 32, 45 (2011). Moreover, "[t]he issue of monetary credit against a defendant's fine cannot be waived and may be raised for the first time on appeal." *People v. Sulton*, 395 Ill. App. 3d 186, 188, 916 N.E.2d 642, 644 (2009).

¶ 11 In the case *sub judice*, defendant was ordered to pay, among other assessments, a

\$5 fine for the drug-court program. 55 ILCS 5/5-1101(f) (West 2010). This court has found the drug-court assessment constitutes a fine when it is unrelated to costs incurred by the State as a result of a prosecution. *People v. Unander*, 404 Ill. App. 3d 884, 886, 936 N.E.2d 795, 797 (2010). As the drug-court assessment is a fine in this case, defendant is entitled to \$5 credit under section 110-14(a) of the Code.

¶ 12 The State, while conceding defendant is entitled to the credit, contends the record shows the trial court already awarded her monetary credit for time spent in custody. The State points to the court’s comment that the 68 days spent in pretrial custody gave her “credit for \$340 for any fines that might be imposed.” The record reveals defendant incurred total court costs of \$295, including the \$5 drug-court program fine. The record, however, does not show credit was applied to offset the \$5 amount. Thus, remand is required.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we affirm as modified and remand this cause to the trial court for issuance of an amended sentencing judgment to reflect application of defendant's monetary credit to the \$5 drug-court assessment.

¶ 15 Affirmed as modified and cause remanded with directions.