

**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).

NO. 4-10-0058

Order Filed 4/21/11

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
STEVEN M. BROWN,	)	Nos. 08CF516
Defendant-Appellant.	)	09CF172
	)	
	)	Honorable
	)	Scott H. Walden,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justice Steigmann concurred with the judgment.  
Justice Appleton specially concurred with the judgment.

**ORDER**

*Held:* Defendant did not timely appeal the issue of restitution, and we are without jurisdiction to consider the issue. Defendant forfeited the issue as well.

Defendant is entitled to credit against fines for 180 days spent in custody as conceded by the State.

Defendant, Steven M. Brown, appeals the trial court's restitution order and the failure to award defendant the \$5-per-day credit against 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 as modified and remand the cause to the trial court with directions to amend the sentencing order to reflect a \$900 credit against fines for the 180 days

served prior to sentencing.

#### I. BACKGROUND

In October 2008, the State charged defendant with two counts of aggravated driving under the influence of alcohol (DUI) and three counts of driving on a revoked license, all arising out of an incident that occurred on October 13, 2008 (Adams County case No. 08-CF-516). In December 2008, defendant pleaded guilty to one count of aggravated DUI (625 ILCS 5/11-501(c-1)(2) (West 2006)) in exchange for a sentence of probation and dismissal of the other four charges.

In January 2009, the trial court sentenced defendant to a 30-month term of probation, 270 days of periodic imprisonment, and a \$2,500 fine. The probation sentencing order specifically provided that defendant was given credit for 54 days' time served in custody. Defendant was also given a \$5-per-day credit against fines for 53 days, totaling \$265. The court also ordered defendant to pay restitution of \$269.83 to the Quincy police department.

The record contains the "Request for Restitution" form completed by the Quincy police department requesting restitution in the amount of \$269.83 for emergency-response expenses. The itemized description of costs included (1) \$106.08 for 2 hours and 26 minutes of an eighth-year officer's time; (2) \$78.39 for 1 hour and 57 minutes of a ninth-year officer's time; (3) \$38.11

for 1 hour and 43 minutes for "Vehicle hours"; (4) \$23.55 for "DUI Restitution Report-1 hour"; and (5) \$23.70 for "Supervisor's Report--30 minutes." Defendant neither filed a postsentencing motion nor an appeal.

In March 2009, the State filed a petition to revoke probation, alleging defendant violated the terms of probation by (1) failing to return to the Adams County jail on February 10, 2009, following his release earlier that day for employment and public-service work and (2) committing the offense of escape (720 ILCS 5/31-6(a) (West 2008)) when he failed to return to the Adams County jail from work release. The State also charged defendant with escape (720 ILCS 5/31-6(a) (West 2006)) in Adams County case No. 09-CF-172.

On July 5, 2009, defendant was located in the State of Washington and taken into custody. In September 2009, defendant admitted one allegation in the petition to revoke probation--that he violated probation by failing to return to the Adams County jail.

On November 9, 2009, the trial court resentenced defendant in the DUI case (Adams County case No. 08-CF-516) to 3 years' imprisonment with credit for 214 days served. The court also stated that "[a]ll that previously was ordered in terms of the mandatory fines and fees remains."

That same day, defendant pleaded guilty to escape in

exchange for a two-year sentence (Adams County case No. 09-CF-172). After accepting defendant's guilty plea, the trial court sentenced defendant to two years' imprisonment to be served consecutively to the sentence imposed in the DUI case (Adams County case No. 08-CF-516). The court did not give defendant credit for any days served because he received credit for those days in the DUI case.

On November 9, 2009, the trial court entered one written sentencing order for both cases. In addition to reflecting the sentences of imprisonment imposed in both cases, the judgment order directed defendant to pay "[a]ll prior fines & fees due in 08 CF 516." The court made no mention of restitution. In addition, the court found defendant was entitled to receive sentence credit for time served in the DUI case for 214 days actually served in custody. The order did not, however, indicate that the court granted defendant the \$5-per-day credit against fines for any days spent in custody, despite the order containing a place to record that information.

In January 2010, defendant filed a motion for leave to file a late notice of appeal, which this court granted.

## II. ANALYSIS

On appeal, defendant challenges the trial court's restitution order and the court's failure to award defendant the \$5-per-day sentence credit under section 110-14(a) of the

Criminal Procedure Code (725 ILCS 5/110-14(a) (West 2008)) for 180 of the days spent in custody prior to sentencing.

A. Court Does Not Have Jurisdiction To Address Restitution

Defendant asserts that when the trial court resentenced him on November 9, 2009, following the revocation of his probation, the court reimposed the fines, fees, and costs imposed as a part of the original sentence of probation, including the requirement that defendant pay \$269.83 in restitution to the Quincy police department. Defendant challenges that restitution order on appeal. See *People v. Felton*, 385 Ill. App. 3d 802, 804-05, 896 N.E.2d 910, 913 (2008) (Fourth District, in a case finding a portion of the restitution order unauthorized and void, noted that a new sentence is imposed when a court revokes probation; therefore, when the trial court reimposed restitution, the defendant could challenge the restitution order on appeal from the resentencing).

Unlike *Felton*, where the trial court reimposed the restitution order, the court here made no mention of restitution when defendant was resentenced on November 9, 2009. Restitution was ordered in January 2009 and was never reimposed. Any challenge to the propriety of requiring defendant to pay restitution to the Quincy police department for the costs of emergency response should have been made within 30 days of the entry of the January 2009 restitution order.

Further, defendant did not raise this argument before the trial court at resentencing or in any motion challenging resentencing. Defendant forfeited his argument by failing to raise it before the trial court. See, e.g., *People v. Rathbone*, 345 Ill. App. 3d 305, 310, 802 N.E.2d 333, 337 (2003) (finding the defendant forfeited his claim regarding sentencing by failing to raise the issue before the trial court); Ill. S. Ct. R. 605(a)(3)(B) (eff. Oct. 1, 2001) (requiring the trial court admonish a defendant sentenced following a probation revocation that he must file a motion to reconsider the sentence). Defendant argues the portion of the restitution attributable to preparing the two reports does not constitute costs of the emergency response. Defendant contends that portion of the restitution order is void and can be attacked at any time. We disagree.

Defendant essentially challenges the trial court's decision that preparing the two reports constituted "costs of the emergency response." The court had both subject-matter and personal jurisdiction to order restitution, and the challenge to the propriety of the court's decision does not render the order void. See, e.g., *People v. Holzapple*, 9 Ill. 2d 22, 25, 136 N.E.2d 793, 795 (1956) (finding the court had the power to order restitution and the challenge that it was excessive did not render the order void). Defendant's challenge is distinguishable

from those cases where a restitution order was void because the entity granted restitution was not a "victim" under the statute (see *People v. Mocaby*, 378 Ill. App. 3d 1095, 1102, 882 N.E.2d 1162, 1168 (2008)) or where the restitution was based on amounts owed in connection with dismissed charges (see *Felton*, 385 Ill. App. 3d at 805, 896 N.E.2d at 913). Here, defendant is essentially challenging the court's conclusion that certain expenses constituted "costs of the emergency response," not the authority of the court to grant the restitution. He failed to challenge the order in a timely manner, so we are without jurisdiction; restitution was not reimposed in a later sentencing order; the restitution order was not void, and defendant forfeited his argument.

B. Defendant Is Entitled to a \$900 Credit Against Fines

Section 110-14(a) of the Criminal Procedure Code provides for a \$5-per-day credit against fines in certain circumstances:

"Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied upon 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 2008).

Although defendant did not raise this issue before the trial court, the issue is not forfeited. See *People v. Watson*, 318 Ill. App. 3d 140, 143, 743 N.E.2d 147, 149 (2000). Because the right to the credit is conferred in mandatory terms, subject to a defendant's application, the normal rules of forfeiture do not apply "and the right is cognizable on appeal as a matter of course subject to a defendant's application for it." *People v. Woodard*, 175 Ill. 2d 435, 457, 677 N.E.2d 935, 945-46 (1997).

Defendant argues, and the State concedes, that he is entitled to a total of 180 days of \$5-per-day credit. Specifically, defendant asserts the trial court granted defendant \$265 (53 days) in credit against fines for the time spent in custody prior to the court's imposition of the original sentence of probation on January 2009. Defendant asserts he is also entitled to an additional \$635 credit (127 days) against fines for the period of time including July 5, 2009, through November 9, 2009, the date of resentencing, for a total credit against fines of \$900 (180 days). Defendant concedes he is not entitled to sentence credit for the time in January and February 2009 defendant served a term of periodic imprisonment incident to the sentence of probation, which explains the discrepancy between the 180 days defendant seeks for his \$5-per-day credit against fines

and the 214 days defendant received in sentence credit. See *Watson*, 318 Ill. App. 3d at 143, 743 N.E.2d at 150 (the defendant was not entitled to the \$5-per-day credit against fines for time spent serving a periodic sentence because that time was served as an incident of probation and was not incarceration on a bailable offense).

We agree with defendant and accept the State's concession. Defendant is entitled to a \$900 credit against the \$2,500 fine. This court therefore remands to the trial court with instructions to amend the written sentencing judgment to reflect a \$900 credit against fines for the 180 days served prior to sentencing.

### III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment as modified and remand with directions to amend the written sentencing judgment to reflect a \$900 credit against fines for the 180 days served prior to sentencing.

Affirmed as modified and remanded with directions.

JUSTICE APPLETON, specially concurring:

I concur with regard to the credit to which defendant is entitled against the fines imposed and that we do not have jurisdiction to address defendant's complaint about restitution to the Quincy police department pursuant to the statutory authority of section 11-501.01(c) of the Illinois Vehicle Code (625 ILCS 5/11-501.01(c) (West 2008)).

I note, however, that in this case, the Quincy police were called to a gas station by its employees because defendant was demonstrably under the influence of alcohol and had driven his car to the service station where he was attempting to fill his car. Two operative phrases of section 11-501.01(c) control: "operation of a motor vehicle while in violation" (of DUI) and "proximately caused any incident resulting in an appropriate emergency response" (625 ILCS 5/11-501.01(c) (West 2008)). While I certainly agree that defendant drove to the gas station while impaired, there was no nexus between that act and an emergency response. Sending patrol cars to investigate a possible DUI, making an arrest, and then writing reports does not, in my view, constitute an emergency response. Rather, it constitutes the police doing their job.