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. 4-09-0769 Order Filed 3/8/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
AARON P. ANGLIN,	)	No. 08CF184
Defendant-Appellant.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

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

ORDER

Held: (1) Where defendant's prison sentence was not excessive, we find the trial court did not abuse its discretion; and

(2) Where defendant was entitled to credit against his fines, remand was required for full credit against those fines.

In April 2009, the trial court found defendant, Aaron P. Anglin, guilty of one count of aggravated battery. In September 2009, the court sentenced him to four years in prison.

On appeal, defendant argues (1) his sentence was excessive and (2) he is entitled to credit against his fines. We affirm as modified and remand with directions.

I. BACKGROUND

In April 2008, the State charged defendant by information with one count of aggravated battery (720 ILCS 5/12-4(a)(7)

(West 2008)), alleging that, in committing a battery, defendant knew the individual harmed to be medical personnel engaged in the performance of his official duties. Defendant pleaded not guilty.

In April 2009, defendant's bench trial commenced. John Beckley testified he was working as a security officer at Provena United Samaritans Medical Center on April 6, 2008. He was called to the emergency room in response to a patient that had become agitated and combative. A nurse advised Beckley that defendant had a direct line into his vein to administer medication and he could not leave with it still inserted. After multiple attempts to talk with defendant, Beckley and staff members decided to restrain him so the line could be removed. While the staff removed the line, Beckley felt pressure on his right arm between his elbow and wrist and saw defendant biting on his arm. Beckley stated he was dressed in a uniform that identified him as a hospital employee. Beckley received "a large impression" from defendant's teeth.

For the defense, Norris Anglin, defendant's mother, testified she was present in the emergency room with defendant. She did not see defendant biting a security guard.

In rebuttal, the State called Jordan Stone, a security officer at Provena United Samaritans Medical Center. On April 6, 2008, he was called to the emergency room to assist in holding

down defendant so the nurses could remove the line. During the commotion, defendant bit Beckley on the right forearm.

Following closing arguments, the trial court found defendant guilty. In May 2009, defense counsel filed several motions, including one for a new trial and one notifying the court that a public defender in Champaign County had requested a fitness evaluation of defendant in an unrelated case. Defense counsel asked leave to supplement the motion with the fitness evaluation of Dr. Lawrence Jeckel as soon as it became available.

In September 2009, the trial court conducted the sentencing hearing. Defense counsel tendered to the court Dr. Jeckel's fitness evaluation that concluded defendant was fit to stand trial. The court sentenced defendant to four years in prison with credit for nine days spent in pretrial custody. Defendant filed a motion to reconsider, which the court denied. This appeal followed.

II. ANALYSIS

A. Jurisdiction

The State points out defense counsel did not request a ruling on his posttrial motion on the day of the sentencing hearing. Counsel tendered Dr. Jeckel's report that concluded defendant was fit to stand trial. The trial court did not rule on the motion and proceeded to sentencing. The State contends defendant abandoned the motion and remand is not required.

"[W]hen there has been no disposition of a timely posttrial motion directed against the judgment, a notice of appeal does not vest the appellate court with jurisdiction." *People v. Willoughby*, 362 Ill. App. 3d 480, 482, 840 N.E.2d 803, 805 (2005). However, "when no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise." *People v. Flynn*, 341 Ill. App. 3d 813, 821-22, 792 N.E.2d 527, 535 (2003).

In the case *sub judice*, defendant's posttrial motion stated Dr. Jeckel's official report had not been received and it was possible defendant was unfit at the time of trial. At the sentencing hearing, defense counsel noted receipt of Dr. Jeckel's report, which found defendant was fit to stand trial. Thus, the report defense counsel was waiting for ultimately did not support his possible basis for a new trial. Counsel, in essence, abandoned his posttrial motion and proceeded to sentencing. Accordingly, defendant's notice of appeal was not premature, and we have jurisdiction over the appeal.

B. Prison Sentence

Defendant argues his four-year prison term was excessive. We disagree.

The Illinois Constitution mandates "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to

useful citizenship." Ill. Const. 1970, art. I, §11. "'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.'" *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217 Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). "A reviewing court gives great deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the cold record." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008).

In this case, the offense of aggravated battery was a Class 3 felony (720 ILCS 5/12-4(e) (West 2008)). A defendant convicted of a Class 3 felony is subject to a sentencing range of

two to five years in prison. 730 ILCS 5/5-8-1(a)(6) (West 2008). Moreover, given that defendant was eligible for an extended-term sentence, he was subject to a term of 5 to 10 years in prison. 730 ILCS 5/5-8-2(a)(5) (West 2008). As the trial court's sentence of four years was within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

Defendant argues the trial court gave insufficient weight to the evidence in mitigation and overemphasized his fitness evaluation. Although referencing his cognitive ability, defendant argues the court failed to consider his criminal conduct did not cause serious physical harm and the vast majority of his convictions were for driving while license revoked.

Born in 1980, defendant has a lengthy criminal history. In 1995, he was adjudicated a delinquent minor. In 1999, he was convicted of possession of a controlled substance and received probation. In 2002, he violated his probation and was sentenced to 18 months in prison. In 2004, defendant received two misdemeanor convictions. In 2006, defendant was convicted of burglary and unlawful possession of a weapon by a felon. Defendant's list of traffic offenses included at least 20 convictions for driving without a license or with a suspended license between 1997 and 2004.

Dr. Jeckel's report indicated defendant functions in the "mild mental retardation range," but his primary problem was

his "dependent personality style." Dr. Jeckel found him to be "indulged, catered to[,] and enabled by his mother and girl-friend."

The trial court indicated it considered the factors in aggravation and mitigation. The court noted defendant's mental and cognitive ability but stated he "never had limits." The court concluded imprisonment was necessary for the protection of the public and probation would deprecate the seriousness of the offense and be inconsistent with the ends of justice.

Defendant has a long history of criminal offenses, and his inability to conform his actions to the requirements of the law show his rehabilitative potential was minimal. Moreover, "[t]he existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). We find no abuse of discretion.

C. Sentence Credit

Defendant argues he is entitled to credit against his fines for the nine days he spent in pretrial custody. We agree, and the State concedes.

Section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure 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 2008). Section 110-14 only applies to fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580, 861 N.E.2d 967, 974 (2006). A "'"fine" is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.'" *Jones*, 223 Ill. 2d at 581, 861 N.E.2d at 975 (quoting *People v. White*, 333 Ill. App. 3d 777, 781, 776 N.E.2d 836, 839 (2002)). A "fee" is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250, 919 N.E.2d 906, 909 (2009) (quoting *Jones*, 223 Ill. 2d at 582, 861 N.E.2d at 975).

In this case, the trial court credited defendant with nine days for time spent in pretrial custody. Defendant notes he was assessed a $4 youth-diversion fee and a $3.80 drug-court fee and asks for credit against them.

Section 5-1101(e) of the Counties Code (55 ILCS 5/5-1101(e) (West 2008)) allows for the imposition of a $5 fee to fund a county's youth-diversion program. Even though labeled a fee, the assessment has been deemed to be a fine and subject to the daily credit. *People v. Cleveland*, 393 Ill. App. 3d 700, 714, 913 N.E.2d 646, 658 (2009).

Section 5-1101(d-5) of the Counties Code (55 ILCS 5/5-

1101(d-5) (West 2008)) allows a county board to provide for the imposition of a $10 fee to finance a drug court. The assessment has been deemed to be fine when imposed as punishment for a criminal conviction rather than to recoup state-incurred expenses. *Graves*, 235 Ill. 2d at 254, 919 N.E.2d at 912. The fine is subject to offset. *People v. Sulton*, 395 Ill. App. 3d 186, 193, 916 N.E.2d 642, 648 (2009).

Here, no evidence indicates the drug-court charge or the youth-diversion assessment sought to reimburse the State for any costs in prosecuting defendant on the charge of aggravated battery. Thus, the charges were fines and subject to the $5-per-day credit pursuant to section 110-14(a) of the Procedure Code.

We also note defendant was required to pay $20 under the Violent Crime Victims Assistance Act (VCVA) (725 ILCS 240/10(c)(2) (West 2008)). However, section 10(c)(2) only applies when no other fine is imposed. As the drug-court fine and the youth-diversion fine were 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 2008); 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 2008). Thus, as the drug-court fine and the youth-diversion fine totaled $7.80, the VCVA fine must be set at $4. This fine is not subject to offset. 725 ILCS 240/10(b) (West 2008); *Brown*, 388 Ill. App. 3d at 115, 904 N.E.2d at 149.

Accordingly, this cause must be remanded for an amended sentencing judgment to reflect defendant's full credit against his drug-court fine and his youth-diversion fine, the vacatur of the $20 VCVA fine, and the imposition of a $4 VCVA fine pursuant to section 10(b).

III. CONCLUSION

For the reasons stated, we affirm as modified and remand with directions. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed as modified; cause remanded with directions.