

NOTICE

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NO. 4-09-0886

Order Filed 3/14/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
CLAYTON C. SHAFFER,)	Nos. 08CF557
Defendant-Appellant.)	08CF946
)	09CF449
)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

Held: (1) Defendant was entitled to an additional 34 days of sentence credit.

(2) Drug-court and children's-advocacy-center assessments could not be imposed by the circuit clerk but could be reimposed by the appellate court.

(3) Defendant failed to show possible neglect of his case by defense counsel, and thus, he was not entitled to appointment of new counsel to represent him in his *pro se* posttrial motion alleging ineffective assistance of counsel.

In May 2009, defendant, Clayton C. Shaffer, pleaded guilty to driving while license revoked with a prior conviction (625 ILCS 5/6-303 (West 2008)) (case No. 08-CF-557) and residential burglary (720 ILCS 5/19-3 (West 2008)) (case No. 08-CF-946). In July 2009, defendant again pleaded guilty to driving while license revoked with a prior conviction (625 ILCS 5/6-303 (West

2008)) (case No. 09-CF-449). The trial court sentenced defendant to consecutive sentences of 15 years' imprisonment for residential burglary, 3 years' imprisonment for driving while license revoked with a prior conviction (case No. 08-CF-557), and 5 years' imprisonment for again driving while license revoked with a prior conviction (case No. 09-CF-449), with 262 days' sentence credit.

Thereafter, the circuit clerk provided defendant notice of the fines and court costs imposed in each case, which included \$10 drug-court assessments and \$15 children's-advocacy-center assessments.

Defendant appeals, arguing he is entitled to (1) 34 additional days' sentence credit and (2) a \$5-per-day credit for time served against his \$15 children's-advocacy-center fees.

We affirm as modified and remand with directions.

I. BACKGROUND

Defendant was charged by information with multiple offenses. In May 2009, defendant pleaded guilty to driving while license revoked with a prior conviction (case No. 08-CF-557) and residential burglary (case No. 08-CF-946). In July 2009, defendant again pleaded guilty to driving while license revoked with a prior conviction (case No. 09-CF-449). In exchange for defendant's guilty pleas, the State dismissed the remaining charges against defendant. The trial court sentenced defendant to

consecutive sentences of 15 years' imprisonment for residential burglary, 3 years' imprisonment for driving while license revoked with a prior conviction (case No. 08-CF-557), and 5 years' imprisonment for again driving while license revoked with a prior conviction (case No. 09-CF-449), with 262 days' sentence credit.

The sentencing judgments entered in each case reflect defendant's credit for time served from March 19, 2008, to March 19, 2008 (case No. 08-CF-557); September 2, 2008, to May 6, 2009, and June 24, 2009, to July 9, 2009 (case No. 08-CF-946); and May 22, 2009, to July 9, 2009 (case No. 09-CF-449). Defendant was in simultaneous custody in case Nos. 08-CF-946 and 09-CF-449 from June 24, 2009, to July 9, 2009.

The docket entries for the sentencing hearing contain preprinted language, apparently stamped into the dockets, on which someone, perhaps the trial judge, added handwritten notations. The docket entries in case Nos. 08-CF-557 and 08-CF-946 contain the preprinted statement "Fines, costs, and fees per (Supp. Sentencing) (Probation) Order." In case No. 08-CF-557, a line is drawn through the statement and in case No. 08-CF-946, a line is drawn through the word "Probation." In case No. 09-CF-449, the docket entry contains the preprinted statement "Fines, fees and costs per Supp. Order."

On July 10, 2009, the circuit clerk filed a "Notice to Party" in each of defendant's cases, detailing the "fine and

court costs" imposed against defendant in connection with each case. Those documents are not signed by the trial judge. According to the notices, the various assessments imposed included the \$10 drug-court assessment and the \$15 children's-advocacy-center assessment.

On August 13, 2009, defense counsel filed a motion to withdraw guilty plea and vacate judgments and a motion to reconsider sentences in each case, which the trial court later denied.

On August 21, 2009, defendant *pro se* filed a motion to withdraw guilty plea and vacate sentence in each case. Defendant stated in part that defense counsel "told me I would receive Day for Day credit for my county time served and that I would receive \$5.00 per day in the county to apply toward my fines and court costs." At an October 2009 hearing, the trial court conducted a detailed inquiry into defendant's *pro se* motions. Defendant argued he was entitled to 320 days' sentence credit based on his time spent in a Coles County jail and a \$5-per-day credit against "my court costs and fines."

The trial court directed that defense counsel investigate whether defendant was entitled to additional sentence credit and stated it would prepare an amended sentencing judgment if defendant was entitled to additional sentence credit. Further, the court applied defendant's \$5-per-day credit against his \$10 drug-court assessment in each case, a total of \$30.

This appeal followed.

II. ANALYSIS

A. Sentencing Credit

The trial court awarded defendant 262 days of sentence credit for time spent in custody. Defendant argues he is entitled to 34 additional days' sentence credit.

Section 5-8-7(b) of the Unified Code of Corrections (Unified Code) provides: "The offender shall be given credit on the determinate sentence *** for time spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-8-7(b) (West 2008). The purpose of the credit-against-sentence provision contained in section 5-8-7(b) is to ensure that defendants do not ultimately remain incarcerated for periods in excess of their eventual sentences. *People v. Latona*, 184 Ill. 2d 260, 270, 703 N.E.2d 901, 906 (1998).

Section 5-8-4(e)(4) of the Unified Code (730 ILCS 5/5-8-4(e)(4) (West 2008)) governs the calculation of consecutive sentences and controls over section 5-8-7(b). *Latona*, 184 Ill. 2d at 270, 703 N.E.2d at 907. Section 5-8-4(e)(4) requires the Department of Corrections to treat consecutive sentences as a "single term" of imprisonment and specifies that the offender shall be credited against "the aggregate *** term of imprisonment" rather than some separate portion of that term. 730 ILCS 5/5-8-4(e)(4) (West 2008). "Since consecutive sentences are to

be treated as a single term of imprisonment, it necessarily follows that defendants so sentenced should receive but one credit for each day actually spent in custody as a result of the offense or offenses for which they are ultimately sentenced." *Latona*, 184 Ill. 2d at 271, 703 N.E.2d at 907. The legislature did not intend that an offender sentenced to consecutive sentences be allowed to receive two credits for each day spent in custody. See *Latona*, 184 Ill. 2d at 271, 703 N.E.2d at 907.

The trial court sentenced defendant to three consecutive sentences. The sentencing judgments entered in each case reflect defendant's credit for time served from March 19, 2008, to March 19, 2008 (case No. 08-CF-557), a total of 1 day; September 2, 2008, to May 6, 2009 (case No. 08-CF-946), a total of 247 days; June 24, 2009, to July 9, 2009 (case No. 08-CF-946), a total of 15 days; and May 22, 2009, to July 9, 2009 (case No. 09-CF-0449), a total of 48 days. Defendant admits he was in "simultaneous custody" in case Nos. 08-CF-0946 and 09-CF-449 from June 24, 2009, to July 9, 2009, a total of 15 days. *Latona* is clear that giving credit to each offense of a consecutive sentence would be essentially giving an offender "double credit" for each day previously served. *Latona*, 184 Ill. 2d at 271, 703 N.E.2d at 907. Not counting the sentencing date, defendant should have received credit for 296 days. The court awarded defendant credit for 262 days. Defendant is entitled to 34 additional days of

sentence credit on remand. Thus, we direct the court on remand to add 34 additional days of credit to the sentencing judgment.

B. This Court Imposes the \$10 Drug-Court Assessment and the \$15 Children's-Advocacy-Center Assessment In Each Case and Defendant Is Entitled to the \$5-Per-Day Credit Against Those Fines

Section 5-1101 of the Counties Code grants counties the authority to enact by ordinance (1) a \$10 "fee" to be paid by the defendant on a judgment of guilty to be used to finance the county mental-health court, county drug court, or both (55 ILCS 5/5-1101(d-5) (West 2008)) and (2) a mandatory children's-advocacy-center "fee" of between \$5 and \$30 to be paid by the defendant on a judgment of guilty (55 ILCS 5/5-1101(f-5) (West 2008)). The McLean County Board has enacted ordinances providing for both "fees." See McLean County Ordinance Setting a \$10.00 Fee for Drug Court (eff. September 1, 2006); McLean County Ordinance Setting a \$15.00 Fee for the Children's Advocacy Center (eff. June 1, 2008).

Both assessments are mandatory. The statutory provision pertaining to the children's advocacy center provides that the county board may adopt a mandatory fee. See 55 ILCS 5/5-1101(f-5) (West 2008). Although the statutory language relating to the drug-court assessment is permissive, the assessment is mandatory once the county board enacts the ordinance. *People v. Folks*, No. 4-09-0579, slip op. at 9 (Ill. App. December 28, 2010), ___ Ill. App. 3d ___, ___, ___ N.E.2d ___, ___.

Although identified as "fees" in the statute, the drug-court and children's-advocacy-center assessments have been found to constitute "fines." A fee compensates the State for costs incurred as a result of prosecuting a defendant, whereas a fine does not. *People v. Sulton*, 395 Ill. App. 3d 186, 193, 916 N.E.2d 642, 648 (2009). Here, both the drug-court and children's-advocacy-center assessments are fines as neither compensates the State for costs incurred as a result of the prosecution of defendant. See *Sulton*, 395 Ill. App. 3d at 192-93, 916 N.E.2d at 647-48 (citing factors in determining whether the drug-court assessment was a cost of prosecution and finding the assessment was a fine); *People v. Jones*, 397 Ill. App. 3d 651, 664, 921 N.E.2d 768, 778 (2009) (finding the children's-advocacy-center assessment was a fine).

Because the drug-court and children's-advocacy-center assessments are fines, those assessments cannot be imposed by the circuit clerk. See *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003) (holding that "[t]he imposition of a fine is a judicial act" and the clerk of the court has no power to levy fines). In this case, who imposed those mandatory fines is unclear. The July 9, 2009, docket entries in case Nos. 08-CF-0946 and 09-CF-449 reflect that defendant's sentence included fines per order. No order is contained in the record. Whether each "Notice to Party" was intended to be the order is not clear

from the record. Further, the notices to party are not reflected as having been filed on the docket sheet, but they are file-stamped. Neither are they signed by the judge. The notices to party are initialed by "TB," who appears to be a clerk. The record contains no other document that can be construed as imposing fines.

Moreover, the trial court applied at the postsentencing hearing defendant's \$5-per-day credit against his \$10 drug-court assessment in each case, a total of \$30. The October 27, 2009, docket entries in each case reflect defendant "granted \$10 *** credit against drug court fee."

This court may reimpose mandatory fines. See *Folks*, slip op. at 11, ___ Ill. App. 3d at ___, ___ N.E.2d at ___ (wherein the appellate court found that drug-court and children's-advocacy-center assessments were mandatory and the clerk could not impose those fines on the court's behalf). The record is not clear whether the trial court imposed those mandatory fines. Assuming the circuit clerk in fact imposed those fines, we vacate the circuit clerk's fines and impose the \$10 drug-court assessment and \$15 children's-advocacy-center assessment in each case. Defendant is entitled to the \$5-per-day credit against the drug-court and children's-advocacy-center fines. See 725 ILCS 5/110-14 (West 2008); *Jones*, 397 Ill. App. 3d at 664, 921 N.E.2d at 778 (\$5-per-day credit applies to the

children's-advocacy-center fine); *Sulton*, 395 Ill. App. 3d at 193, 916 N.E.2d at 648 (the defendant was entitled to the \$5-per-day credit against the drug-court assessment).

C. Ineffective Assistance of Counsel

Defendant also argues that his posttrial allegations of ineffective assistance of counsel showed possible neglect of the case and required new counsel be appointed. Appointment of new counsel is not automatically required whenever a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. See *People v. Moore*, 207 Ill. 2d 68, 77, 797 N.E.2d 631, 637 (2003). Rather, the trial court must conduct an inquiry to determine the factual basis of the claim. *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637. If the court finds the claim lacks merit or relates only to matters of trial strategy, then new counsel is unnecessary. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. However, if the inquiry indicates trial counsel's possible neglect of the case, then the court should appoint new counsel. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. In reviewing the posttrial proceedings on the defendant's *pro se* motion, our operative concern is to determine "whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638.

Here, the trial court conducted a detailed inquiry into

defendant's allegations of ineffective assistance. The court reviewed and inquired into each of defendant's allegations. The court gave defendant the opportunity to argue, explain, and support each allegation. The trial court listened to defendant's allegations and discussed them with defendant and defense counsel. In denying defendant's motions, the trial court determined that the alleged errors did not show possible neglect of his case by defense counsel. We agree.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment as modified. This court (1) vacates the circuit clerk's assessment of fines and imposes the \$10 drug-court and \$15 children's-advocacy-center fines in each case, which are fully offset by credit for the time defendant spent in presentencing custody, and (2) remands for issuance of an amended sentencing judgment reflecting 34 additional days of credit and imposition of and crediting against the aforementioned fines. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.