

**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. 4-09-0911

Order Filed 3/7/11

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, ) Appeal from  
Plaintiff-Appellee, ) Circuit Court of  
v. ) Woodford County  
ELWYN V. THOMAS, ) No. 09CF65  
Defendant-Appellant. )  
) Honorable  
) John B. Huschen,  
) Judge Presiding.

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PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Steigmann and Pope concurred in the judgment.

**ORDER**

*Held:* (1) Where the trial court's sentencing judgment incorrectly stated defendant was convicted of escape, remand was necessary to modify the judgment to correctly reflect defendant was convicted of violation of bail bond.

(2) Although defendant did not receive medical treatment during his arrest, the trial court properly assessed a \$10 arrestee's-medical-costs fee.

After an October 2009 bench trial, the trial court found defendant, Elwyn V. Thomas, guilty of violation of bail bond (720 ILCS 5/32-10(a) (West 2006)), a Class 3 felony. In November 2009, the court sentenced defendant to two years' imprisonment to run consecutive with his sentence in Woodford County case No. 06-CF-117.

Defendant appeals and argues (1) the trial court's sentencing judgment should be modified to show he was convicted

of violation of bail bond, instead of escape and (2) his \$10 arrestee's-medical-costs fee should be vacated because he did not receive medical treatment during his arrest. We affirm as modified and remand with directions.

#### I. BACKGROUND

In May 2009, a grand jury indicted defendant on the offense of escape for failure to appear at a November 2006 hearing resulting in forfeiture of his bail and for willfully failing to surrender himself within 30 days of the bail forfeiture. However, the indictment stated defendant was charged with violating section 32-10(a) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/32-10(a) (West 2006)), the statutory provision for violation of bail bond. In August 2009, a grand jury indicted defendant on violation of bail bond, and at the August 2009 hearing, the State informed the trial court the second indictment modified the "title" of defendant's offense from escape to violation of bail bond.

At defendant's bench trial in October 2009, Nicholas Cavera, chief of the Minonk police department, testified he arrested defendant based on a warrant in August 2006. Additionally, Jim Elliott, a deputy with the Woodford County sheriff's department, testified he booked defendant into the county jail based on a warrant for failure to appear and a charge of aggravated criminal sexual assault.

During the trial, the State requested the trial court take judicial notice of the file for case No. 06-CF-117. Specifically, the State requested the court note (1) defendant posted bond, (2) his bond was forfeited because he failed to appear at a court hearing, (3) he failed to appear within 30 days of the bond forfeiture, and (4) he was arrested in April 2009. Additionally, the State asked the court to focus on (1) the presentence investigation report, (2) defendant's written statement attached to the report, and (3) defendant's testimony at the sentencing hearing.

Defense counsel objected to the admission of the presentence investigation report and defendant's statement into evidence, arguing the documents were hearsay. The court agreed the presentence report was inadmissible hearsay, but it admitted defendant's written statement over defense counsel's objection.

Following closing arguments, the trial court found defendant had "willfully failed to surrender himself" within 30 days of the bond forfeiture. The court noted defense counsel acknowledged defendant had been admitted to bail and had failed to surrender himself within 30 days of the bond forfeiture. The court pointed to defendant's written statement and noted defendant stated he was returning to "face the prosecution." However, the court also noted defendant was arrested in California in January 2009.

Thereafter, in November 2009, defendant was sentenced to two years' imprisonment to run consecutive with his sentence in case No. 06-CF-117. Although the trial court's sentencing judgment stated defendant was sentenced for the offense of escape, it referenced the statutory provision for violation of bail bond.

This appeal followed.

## II. ANALYSIS

### A. Modification of Sentencing Judgment

Defendant argues the sentencing judgment should be amended because it incorrectly states defendant was convicted of escape when he was instead convicted of violation of bail bond. The State concedes the sentencing judgment should be amended under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967) to reflect defendant was actually convicted of violation of bail bond.

Pursuant to section 32-10(a) of the Criminal Code (720 ILCS 5/32-10(a) (West 2006)), violation of bail bond results when a defendant "incurs a forfeiture of \*\*\* bail and willfully fails to surrender himself within 30 days following the date of such forfeiture."

Although the trial court's sentencing judgment listed the convicted offense as escape, the trial court found defendant willfully failed to surrender after the bond forfeiture.

Accordingly, we order the sentencing judgment be modified to accurately reflect defendant's conviction of violation of bail bond. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967) (granting a reviewing court authority to modify the judgment from which an appeal is taken).

B. Arrestee's-Medical-Costs Fee

Defendant next argues the \$10 arrestee's-medical-costs fee was improper because the record does not show he received medical treatment during his arrest. As a result, defendant maintains the \$10 fee should be vacated.

Section 17 of the County Jail Act (Act) (730 ILCS 125/17 (West 2008)) provides, in part, the following:

"The county shall be entitled to a \$10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense. The fee shall be taxed as costs to be collected from the defendant, if possible, upon conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be es-

established and known as the County Jail Medical Costs Fund [(Fund)]. Moneys in the Fund shall be used solely for reimbursement to the county of costs for medical expenses and administration of the Fund."

In *People v. Unander*, 404 Ill. App. 3d 884, 889-90, 936 N.E.2d 795, 799 (2010), this court held "section 17 of the Act contains an unqualified statement the county is entitled to \$10 for each conviction other than a conviction for a petty offense or business offense[,]" and the \$10 fee should be collected regardless of whether a defendant received medical treatment.

Accordingly, the \$10 arrestee's-medical-costs fee should not be vacated because the charge was correctly assessed by the trial court.

### III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment as modified and remand with directions for issuance of an amended sentencing judgment reflecting defendant's conviction of violation of bail bond. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed as modified and remanded with directions.