

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. 4-10-0214

Order Filed 3/16/11

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
WILLIAM D. DICKERSON,)	No. 96CF314
Defendant-Appellant.)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

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

ORDER

Held: Pursuant to *Anders v. California*, no meritorious issue can be raised on appeal. Accordingly, OSAD's motion to withdraw as counsel on appeal is allowed, and the trial court's judgment is affirmed.

This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case as to the March 2010 denial of defendant's January 2010 motion to compel the court to amend the sentencing order. For the following reasons, we agree and affirm.

I. BACKGROUND

In March 1997, a jury convicted defendant, William D. Dickerson, of possession of a controlled substance (720 ILCS 570/402(c) (West 1996)), a Class 4 felony, in Vermilion County

case No. 96-CF-314. In May 1997, the trial court sentenced defendant to 180 days' incarceration in the county jail with a credit for 2 days served, 25 months' probation with a monthly probation fee of \$10 while employed, including as conditions 40 hours of public service and ordered him to pay a fine of \$400 and court costs to be taken from his bond.

Defendant was arrested July 13, 1996, just before midnight and was incarcerated on July 14, 1996, and July 15, 1996, before posting \$500 bond. Also, defendant posted an additional \$500 bond after he was arrested for failure to appear for a status hearing on a petition to revoke probation in June 1999.

In May 1997, defendant appealed, arguing he was entitled to a \$15 credit against his \$400 fine. This court affirmed the conviction but "remanded to amend the sentencing order to reflect [a] \$10 credit" against defendant's fine. *People v. Dickerson*, No. 4-97-0456, slip order at 3 (April 13, 1998) (unpublished order under Supreme Court Rule 23).

On May 12, 1998, a Vermilion County docket entry in case No. 96-CF-314 stated as follows:

"MANDATE FROM APPELLATE COURT FILED[.]
Affirmed and remanded with directions. [Defendant] given \$20 against fine this date as per mandate."

Therefore, defendant's fine was reduced from \$400 to \$380 pursuant to the May 12, 1998, docket entry.

On January 28, 2010, defendant, now a resident of Greenville Federal Correctional Institution, filed a *pro se* motion to compel the court to amend the sentencing order, arguing (1) the trial court failed to amend the sentencing order to reflect the credit against his fine or, alternatively, erred by amending the sentencing order outside his presence; (2) the court deprived him of his right to file a "direct appeal of his conviction and/or to contest his sentence" by failing to amend the sentencing order or amending the order outside his presence; and (3) he is entitled to a \$20 refund from overpayment of his fine.

On March 8, 2010, the trial court denied defendant's motion, stating the court's docket reflected a \$20 credit against defendant's fine. Additionally, the court noted defendant was discharged from probation and refunded \$450 in September 1999. Therefore, the court held the sentencing-order issue was moot.

On March 16, 2010, defendant filed a notice of appeal, and the trial court appointed OSAD to represent him. On April 14, 2010, OSAD moved to withdraw, attaching to its motion a brief in conformity with the requirements of *Anders v. California*, 386 U.S. 738 (1967). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by September 15, 2010.

In September 2010, defendant filed a *pro se* response to OSAD's motion for leave to withdraw, arguing (1) the trial court erred by denying him the opportunity to appeal the modification of his sentencing order, as well as his conviction and sentence; (2) and he was entitled to a refund of \$207 from overpayment of his fine. In October 2010, the State filed a brief, arguing the court's denial of defendant's motion to compel the court to amend the sentencing order should be affirmed because (1) the record shows defendant was awarded a \$20 credit for his fine and (2) defendant was not entitled to a new sentencing hearing because allowing a new hearing would exceed the scope of this court's mandate. In November 2010, defendant filed a reply brief restating his above arguments.

After examining the record and executing our duties consistent with *Anders*, we agree with OSAD.

II. ANALYSIS

OSAD contends no colorable argument can be made the trial court erred in denying defendant's *pro se* motion to compel court to amend sentencing order. We agree.

A. Modification of Sentencing Order

First, defendant argues the trial court erred by failing to amend the sentencing order to reflect the \$20 credit against his fine. Additionally, defendant argues he was entitled to be present when the trial court amended the sentencing order

at a "mandate hearing." He also argues the trial court's failure to hold this hearing deprived him of his right to appeal the modification of the sentencing order, as well as his conviction and sentence. We disagree.

The issuance of a mandate vests a trial court with jurisdiction to only take action in conformity with the mandate. *People v. Abraham*, 324 Ill. App. 3d 26, 30, 753 N.E.2d 1219, 1223 (2001). "A trial court lacks the authority to exceed the scope of the mandate." *People v. Winters*, 349 Ill. App. 3d 747, 750, 812 N.E.2d 737, 739 (2004).

In May 1997, defendant brought a direct appeal, after his conviction and sentence, arguing he was entitled to a \$15 credit against his fine. The issuance of this court's May 11, 1998, mandate concluded defendant's appeal. This court affirmed defendant's conviction but remanded with directions for the trial court to amend the sentencing order to reflect a \$10 credit against defendant's \$400 fine. Pursuant to the trial court's May 12, 1998, docket entry, defendant was given a \$20 credit against his fine--more than directed by the mandate. Defendant's sentence was entered by docket entry on May 2, 1997, and defendant's credit was also entered by docket entry. Therefore, defendant received the \$10 credit consistent with our mandate.

Defendant further argues he was entitled to the \$20 credit against his fine because he was awarded an extra \$10 for

every \$40 of fines imposed under "section 591(c) [sic]" of the Unified Code of Corrections (Unified Code). Defendant has referenced the incorrect statute and, instead, it appears he is referring to section 5-9-1(c) of the Unified Code. According to section 5-9-1(c) of the Unified Code,

"There shall be added to every fine imposed in sentencing for a criminal or traffic offense *** an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed." 730 ILCS 5-9-1(c) (West 1996).

This section pertains to the imposition of fines rather than credit against fines under section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 1996)).

Therefore, the trial court went beyond the scope of our mandate by giving defendant a \$20 credit against his fine. The record proffered by defendant does not resolve whether the trial court accorded defendant double credit, in which case the \$10 would remain due and owing. See *People v. Harris*, 203 Ill. 2d 111, 118-19, 784 N.E.2d 792, 797 (2003).

Additionally, defendant was not deprived of a right to directly appeal his conviction, sentence, and the modification of his fine. Defendant had an opportunity to pursue a direct appeal on his conviction and sentence, and he in fact exercised it. He is not entitled to a new opportunity approximately 13 years

later. Because the May 11, 1998, mandate did not require the trial court to hold a hearing on the modification of the fine, the court did not err in modifying defendant's fine by docket entry. As defendant's direct appeal was concluded when this court issued its mandate, defendant is not entitled to another round of appeals on the modification of his fine.

B. Overpayment of Fine

In the trial court, defendant argued he was entitled to a \$20 refund from overpayment of his fine. However, in his response to OSAD's motion to withdraw, defendant argued he was entitled to a refund of \$207 from overpayment of his fine. Because defendant failed to argue he was entitled to a \$207 refund in the trial court, this issue is not properly before us.

"Generally, issues not raised in the trial court are waived, for purposes of appeal." *People v. Wheeler*, 392 Ill. App. 3d 303, 309, 912 N.E.2d 681, 687 (2009). Although defendant now complains he is entitled to a \$207 refund from his payment of fine, this issue was not raised in the trial court.

Defendant points to exhibit D-1, attached to his response to OSAD's motion to withdraw, to support his argument. Defendant asserts he received this document from the trial court; however, he failed to bring it to the court's attention in his motion to compel the court to amend its sentencing order. Nor was the exhibit made a part of the record in any manner set forth

in Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005), such as with a bystander's report or agreed statement of facts. Thus, this issue was not part of the court's ruling, and we do not have the benefit of its judgment or reasoning, nor is there any explanation of the figures on this document by the court, the clerk, or the prosecutor.

Additionally, this document does not add anything helpful to defendant's original pleading filed in the trial court. Instead, defendant uses it to raise matters outside the scope of his original pleading. Although this exhibit suggests defendant might be entitled to a refund of \$207, any possible overpayment has nothing to do with this appeal.

With respect to defendant's initial argument he is entitled to a \$20 refund for overpayment of his fine, the May 12, 1998, docket entry shows defendant was given a credit for his fine, which reduced the \$400 fine to \$380. OSAD's exhibit D-1, attached to its motion for leave to withdraw, shows defendant was assessed \$380 for the fine and \$583 for fees and costs, after the \$20 reduction in defendant's fine (from \$400 to \$380). Additionally, the exhibit shows defendant paid a total of \$963 for his fine, fees, and costs. Therefore, the court did not err in finding defendant was not entitled to the \$20 credit. Accordingly, the court correctly denied defendant's motion to amend the sentencing order.

III. CONCLUSION

For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed.