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).

2011 IL App (4th) 100208-U

Filed 9/12/11

NO. 4-10-0208

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
KEITH M. HAGGARD,	)	No. 06CF365
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where it appeared from the record that the circuit clerk, not the trial court, imposed certain fines upon defendant, we vacate those assessments and reimpose those that are mandatory fines, and hold that the same are subject to credit in the amount of $5 per day for each day defendant spent in pretrial custody.

¶ *2* Defendant, Keith M. Haggard, appeals the summary dismissal of his postconviction petition. Though he does not raise any claim of error related to those issues posed in his petition, he challenges for the first time in this appeal the assessment of fines associated with his sentencing judgment. In particular, defendant argues that he is entitled to monetary credit toward his fines for each day he spent in pretrial custody. We agree with defendant's claim of error and affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 In November 2006, a jury found defendant guilty of aggravated arson (720 ILCS 5/20-

1.1(a)(1) (West 2006)) for starting a fire on the porch of a residence in LeRoy, Illinois. The trial court sentenced him to 15 years in prison. On direct appeal to this court, defendant argued that his conviction should be reversed because the court erred in allowing the State to present evidence that defendant was a "person of interest" and under surveillance with regard to other fires. We affirmed, finding the State's use of the term to describe defendant did not equate to a finding that defendant had a propensity to engage in criminal activity. *People v. Haggard*, No. 4-07-0433 (June 30, 2008) (unpublished order under Supreme Court Rule 23).

¶ 5 In November 2009, defendant filed a *pro se* postconviction petition, claiming his constitutional rights were violated as follows: (1) the trial court improperly allowed evidence of other crimes; (2) the evidence was insufficient to prove defendant guilty beyond a reasonable doubt; (3) the court improperly allowed evidence that defendant was described as a "person-of-interest"; (4) the court erred in failing to grant defendant's motion for a directed verdict at the close of the State's case; (5) the court failed to properly admonish defendant during sentencing; and (6) the court failed to consider certain factors in mitigation when imposing defendant's sentence. In December 2009, defendant filed an affidavit amending his petition with further assertions and supporting documentation demonstrating that the victim had observed no damage to his front porch as a result of the arson.

¶ 6 In February 2010, the trial court reviewed defendant's petition, amended affidavit, and supporting documentation and found the claims raised therein were either raised or could have been raised on direct appeal. The court found the claims were barred by either the doctrine of forfeiture or *res judicata*. The court dismissed defendant's petition as frivolous or patently without merit. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 In this appeal, the office of the State Appellate Defender (OSAD) was appointed to represent defendant. OSAD presents as the only claim of error the propriety of the December 2006 notice to party setting forth the assessed fines, fees, and costs associated with defendant's sentence and the lack of statutory monetary credit awarded as provided in section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/110-14(a) (West 2006)). Initially, we note that defendant may raise this issue at this stage of the proceedings without the risk of this court holding that such an issue was subject to procedural default. See *People v. Caballero*, 228 Ill. 2d 79, 88 (2008) (holding a statutory claim under section 110-14 "may be raised at any time and at any stage of court proceedings" and an "appellate court may, in the 'interests of an orderly administration of justice,' grant the relief requested").

¶ 9 Defendant claims the trial court failed to award $5-per-day credit toward the $527 in fines assessed. In particular, he contends the *per diem* credit should be awarded toward the following assessments: (1) $190 for a state offender deoxyribonucleic acid (DNA) assessment (hereinafter DNA-analysis assessment), (2) $10 for the DNA analysis administrative fee (hereinafter administrative fee), and (3) $10 for a drug-court program. At sentencing, the trial court awarded defendant 251 days for time spent in pretrial custody. Applying the credit of $5 for each day spent in pretrial custody pursuant to section 110-14(a) of the Procedure Code (725 ILCS 5/110-14(a) (West 2006)), the total amount of credit awarded would fully satisfy these fines.

¶ 10 The State does not contest that these assessments constitute fines subject to offset with the *per diem* credit. Instead, the State insists that the fines should be vacated because it was the circuit clerk, not the trial court, that imposed them. The State asks this court to remand the cause

so that the fines may be properly imposed by the trial court. We agree that it appears from the record that the circuit clerk, not the court, imposed the fines. As such, it was improper and the fines should be vacated. See *People v. Allen*, 371 Ill. App. 3d 279, 285 (2007).

¶ 11 However, this court has the authority to reimpose mandatory fines. *People v. Folks*, 406 Ill. App. 3d 300, 306 (2010). The $190 DNA-analysis assessment, the $10 associated administrative fee, and the $10 drug-court-program fine are mandatory assessments (see 55 ILCS 5/5-1101(d-5) (West 2006); 730 ILCS 5/5-4-3(j), (k)(2) (West 2006)) and are therefore within our jurisdiction to so reimpose them. The fines are also subject to the *per diem* monetary credit provisions of section 110-14(a) of the Procedure Code (725 ILCS 5/110-14(a) (West 2006). Accordingly, we grant defendant the relief requested.

¶ 12 III. CONCLUSION

¶ 13 For the reasons stated, we affirm the trial court's judgment as modified. This court (1) vacates the circuit clerk's assessment of fines, (2) reimposes the $200 DNA-analysis assessment and associated administrative cost, (3) reimposes the $10 drug-court fine, and (4) fully offsets the same by credit for the time defendant spent in presentence custody. Further, we decline to award the State its $50 in costs as requested, as the result of this appeal was entirely in defendant's favor.

¶ 14 Affirmed as modified.