

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).

2012 IL App (4th) 101021-U

Filed 4/10/12

NO. 4-10-1021

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DEMARKO L. BROWN,	)	No. 10CF1041
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices McCullough and Cook concurred in the judgment.

### ORDER

- ¶ 1 *Held:* (1) Appellate court lacked jurisdiction to address public-defender fee imposed during original sentencing when defendant filed appeal after revocation of probation and resentencing proceedings; (2) defendant was entitled to receive 40 days' sentence credit for presentence incarceration; and (3) defendant's \$5-per-day sentence credit could be applied to offset drug-court assessment because assessment represented a fine, not a fee.
- ¶ 2 In June 2010, the State charged defendant, Demarko L. Brown, with disorderly conduct (720 ILCS 5/26-1(a)(2) (West 2010)), a Class 4 felony. In July 2010, defendant pleaded guilty to the charge, and the trial court sentenced him to 12 months' probation. The court also imposed \$100 in court-appointed counsel fees. In August 2010, the State filed a petition to revoke defendant's probation, alleging defendant committed criminal trespass to land. Defendant admitted the violation, and in October 2010 the court resentenced him to five years in prison. The next day, defendant filed a motion to reconsider his sentence, which the court denied. This

appeal followed. We affirm as modified and remand with directions.

¶ 3

## I. BACKGROUND

¶ 4 In June 2010, the State charged defendant, Demarko L. Brown, with disorderly conduct (720 ILCS 5/26-1(a)(2) (West 2010)), a Class 4 felony, for pulling a fire alarm without reasonable ground to believe a fire existed. In July 2010, defendant agreed to plead guilty to the charge. In exchange, the parties agreed defendant would pay court costs, a \$300 fine, a \$10 local anti-crime fee, a violent crime victims assistance fee, a probation service fee, and a \$200 deoxyribonucleic acid (DNA) analysis fee. The parties also agreed defendant would receive a sentence of 12 months' probation, with the condition that he serve 11 days in jail, with credit for 11 days' served and \$55 credit against fines imposed. At the conclusion of the proceedings, the court stated it was going to assess a fee for defendant's court-appointed counsel. After confirming with defense counsel that defendant was unemployed, the court imposed a \$100 fee.

¶ 5 In August 2010, the State filed a petition to revoke defendant's probation, alleging defendant violated his probation by committing criminal trespass to land (720 ILCS 5/21-3(a)(2) (West 2010)). In September 2010, defendant admitted the violation. The trial court accepted defendant's admission. In October 2010, the court resentenced defendant to 5 years' imprisonment, with 37 days' credit for pretrial incarceration.

¶ 6 The court denied defendant's motion to reconsider sentence. This appeal followed.

¶ 7

## II. ANALYSIS

¶ 8 On appeal, defendant argues (1) the trial court erred when it imposed a \$100 public-defender reimbursement fee without first holding a hearing to determine defendant's



his revocation of probation. The record does not establish the court imposed new attorney fees or reaffirmed the \$100 attorney fee as part of its October 2010 sentence. We are without jurisdiction to address the propriety of the public-defender fee.

¶ 13 In *Bell* we remanded the trial court's imposition of a public-defender fee after the defendant appealed his revocation of probation. *Bell*, 296 Ill. App. 3d at 155, 694 N.E.2d at 681. However, the facts in *Bell* are easily distinguishable from the present case. In *Bell*, the court originally sentenced the defendant to probation and ordered him to pay a \$100 public-defender fee. *Bell*, 296 Ill. App. 3d at 147, 694 N.E.2d at 676. Later, the court revoked the defendant's probation. *Bell*, 296 Ill. App. 3d at 148, 694 N.E.2d at 676. The court resentenced the defendant to probation and ordered him to pay a public-defender fee of \$100 without first holding a hearing on the defendant's ability to pay the fee. *Bell*, 296 Ill. App. 3d at 154, 694 N.E.2d at 680. The defendant appealed the revocation proceedings, arguing, in part, the court erred in assessing the public-defender reimbursement fee without holding a hearing. *Bell*, 296 Ill. App. 3d at 153, 694 N.E.2d at 680. We agreed with the defendant and vacated the trial court's order, remanding the case for a hearing on the defendant's ability to pay the fee. *Bell*, 296 Ill. App. 3d at 155, 694 N.E.2d at 681. In so doing, we specifically noted, "This was a new sentence of probation and new monetary assessments were made. The trial court did not say defendant would be paying \$100 previously due in public defender fees; it assessed a new fee of \$100." *Bell*, 296 Ill. App. 3d at 154, 694 N.E.2d at 680.

¶ 14 In *Bell*, the trial court assessed a *new* fee during the revocation of probation proceedings, and it was this fee that we addressed on appeal. In the present case, the trial court did not impose a new fee or even affirm the old fee during the revocation of probation

proceedings or resentencing. *Bell* does not control our analysis in this case.

¶ 15 For the foregoing reasons, we are without jurisdiction to address the propriety of the trial court's July 2010 imposition of a \$100 public-defender fee.

¶ 16 B. Additional Credit for Time Spent in Custody Prior to Sentencing

¶ 17 Defendant argues he is entitled to six additional days of sentence credit, for a total of 43 days' credit, for time spent in custody prior to sentencing. The State concedes defendant is entitled to three additional days' credit, but disputes the other three days. We accept the State's concession and address the disputed three days of credit.

¶ 18 Section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2010)), provides that an offender shall be given credit on his sentence for "time spent in custody as a result of the offense for which the sentence was imposed." "A 'defendant is entitled to one day of credit for each day (or portion thereof) that he spends in custody prior to sentencing, including the day he was taken into custody.'" *People v. Hill*, 409 Ill. App. 3d 451, 456, 949 N.E.2d 1180, 1185 (2011) (quoting *People v. Ligons*, 325 Ill. App. 3d 753, 759, 759 N.E.2d 169, 174 (2001)).

¶ 19 In this case, the record shows defendant was arrested on June 21, 2010, and held in custody until sentencing on July 1, 2010. The sentencing order for probation properly credited defendant for 11 days of incarceration.

¶ 20 Both parties agree defendant was again arrested on August 20, 2010. However, the parties dispute whether defendant was released from custody on September 17, 2010, or on September 20, 2010. Defendant argues the record is ambiguous and therefore the case should be remanded for an evidentiary hearing pursuant to *People v. Hill*, 409 Ill. App. 3d 451, 457, 949

N.E.2d 1180, 1185 (2011). Specifically, defendant points to a docket entry from September 20, 2010, which states "Released on Recognizance bond form on file," and argues the entry makes it unclear whether defendant had bonded out prior to the filing of the form. We disagree.

¶ 21 Ample evidence in the record indicates defendant was released from custody on September 17, 2010. Both the trial court's order for sentencing report and the presentence investigation report indicate defendant was no longer incarcerated on September 17. Likewise, a docket entry from September 17 states "ROR allowed." Finally, the transcript from the September 17 petition to revoke probation proceedings provides as follows:

"THE COURT: All right. The defendant's bond is fixed in the amount of 1,000 dollars, recognizance is authorized. \*\*\*

Mr. Brown, you're going to be released from custody today."

¶ 22 The September 20 docket entry shows only that the released-on-recognizance bond form was on file as of September 20. This form is not in the record on appeal before us. The order for sentencing report, the presentence investigation report, the docket entry from September 17, and the trial court transcript from September 17 all indicate defendant was released from custody on September 17.

¶ 23 We find defendant is entitled to 40 days of credit for time served prior to sentencing and has available a corresponding \$200 credit available for crediting against fines imposed.

¶ 24 C. Monetary Credit Against Defendant's Drug Court Fine

¶ 25 Finally, defendant argues the trial court erred in failing to apply credit from time spent in custody toward his \$5 drug-court assessment. The State concedes defendant should

receive credit toward the \$5 assessment. We accept the State's concession and agree.

¶ 26 Whether a defendant received proper credit against his fine is a question of law reviewed *de novo* and which may be raised for the first time on appeal. *People v. Sulton*, 395 Ill. App. 3d 186, 188-89, 916 N.E.2d 642, 644 (2009). Under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), "Any 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." In deciding whether an assessment against a defendant is a fine or fee, the court considers whether the assessment seeks to compensate the State for costs it incurred as a result of defendant's prosecution. *Sulton*, 395 Ill. App. 3d at 191, 916 N.E.2d at 646. If the assessment is "compensatory in nature, it constitutes a fee." *Sulton*, 395 Ill. App. 3d at 191, 916 N.E.2d at 647.

¶ 27 In this case, the trial court ordered defendant to pay \$5 for the "Drug Court Program." The record does not indicate defendant utilized a drug court program. Therefore, the \$5 assessment represents a fine, not a fee, and defendant's \$5-per-day credit can be applied to offset it.

¶ 28 III. CONCLUSION

¶ 29 We affirm the trial court's judgment but remand for issuance of an amended sentencing judgment order reflecting (1) 40 days' credit for time served prior to sentencing, (2) a \$5-per-day credit for each of the 40 days served, and (3) application of defendant's \$5-per-day credit to the trial court's \$5 drug court assessment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed as modified and cause remanded with directions.