

NOTICE
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2012 IL App (4th) 101029-U

Filed 3/26/12

NO. 4-10-1029

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
STEVEN MARK HARRIS,)	No. 10CM556
Defendant-Appellant.)	
)	Honorable
)	John C. Constigan,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court held (1) the trial court erred in setting defendant's presentence detention credit at \$60, and modified the credit to \$50, (2) and vacated the improperly imposed \$50 crime-detection-network assessment.
- ¶ 2 In April 2010, the State charged defendant, Steven Mark Harris, by information with criminal trespass to a residence (720 ILCS 5/19-4(a)(1) (West 2010)) and two counts of battery (720 ILCS 5/12-3(a)(2) (West 2010)). The State later dismissed one count of battery. In September 2010, a jury found defendant not guilty of battery but guilty of criminal trespass to a residence. In October 2010, the trial court sentenced defendant to 24 days in the McLean County jail. The court also imposed a \$300 fine, court costs, a \$32 violent-crime-victim's assistance fund fine, and a \$50 crime-detection-network assessment. The court credited defendant with \$60 pretrial detention credit.

¶ 3 On appeal, defendant argues (1) the presentence-detention credit should be \$120 and (2) the \$50 crime-detection-network assessment is improper. We affirm in part as modified, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On April 1, 2010, defendant went to the home of a childhood friend, Scott Bryant. A warrant had been issued for defendant's son, and according to defendant, Bryant repeatedly demanded to know the whereabouts of his son. Defendant believed Bryant wanted to collect a monetary reward for informing the police of his son's location. Bryant smelled alcohol on defendant's breath and because Bryant was a recovering alcoholic, Bryant asked defendant to leave. Defendant did not leave.

¶ 6 Defendant and Bryant got into a disagreement which escalated into a physical altercation. Bryant's wife also told defendant to leave, but defendant did not leave. Bryant hit defendant in the jaw, believing defendant was going to "grab" his wife. At some point, defendant ended up on top of Bryant, who was on the floor. Bryant's wife forced defendant off Bryant with a bat.

¶ 7 Bryant's wife called the police and defendant waited outside for them to arrive. Defendant was arrested. The next day, defendant was charged by information with criminal trespass to a residence and two counts of battery. One count of battery was later dismissed.

¶ 8 After a September 2010 trial, the jury found defendant guilty of criminal trespass to a residence, a Class A misdemeanor (720 ILCS 5/19-4(b)(1) (West 2010)) and not guilty of battery. In October 2010, the trial court sentenced defendant to 24 days in the McLean County jail, with credit for 24 days served, ordered him to pay a \$300 fine plus court costs, and assessed

a \$32 violent-crime-victim assistance fine and a \$50 crime-detection-network assessment, and credited defendant with \$60 pretrial detention credit.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues (1) he is entitled to an amendment of the sentencing judgment to reflect a \$5 per day credit against every day he spent in presentence detention, and (2) this court should vacate the statutorily unauthorized crime-detection-network assessment.

¶ 12 A. Presentence Detention Credit

¶ 13 Defendant first argues he is entitled to an additional \$60 credit to be applied against his fines based on the written sentencing judgment stating he was to receive 24 days' credit for days spent in presentence custody. The State asserts defendant was properly credited \$5 per day for the days spent in presentence detention and no further credit is warranted.

¶ 14 Whether a defendant received proper credit against his fine is a question of law that is reviewed *de novo* and 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).

¶ 15 Section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)) provides:

"Credit for Incarceration on Bailable Offense.

(a) 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. However, in no case

shall the amount so allowed or credited exceed the amount of the fine."

Such credit may only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580, 861 N.E.2d 967, 974 (2006).

¶ 16 Defendant specifically argues the misdemeanor record sheet, *i.e.*, the trial court's docket entry states "credit 24 days." Based on this notation, defendant argues he is entitled to a total credit of \$120 against fines (24 days x \$5). Defendant's brief states no court reporter was present for the sentencing hearing, which is memorialized by a docket entry and bystander's report. The State responds this 24 days' credit notation is clearly erroneous because defendant did not spend 24 days in presentence detention. Defendant was arrested on April 1, 2010, and according to the State, defendant posted bond and was released from custody on April 12, 2010. Therefore, the State asserts the record establishes defendant was in custody for 12 days, not 24 days, and was properly awarded \$60 credit for days spent in pretrial custody (12 days x \$5 = \$60). Our review of the record, however, establishes defendant posted bond on Saturday April 10, 2010, although the paperwork was not filed in the circuit clerk's office until Monday, April 12, 2010. Based on actual time spent in presentence custody, defendant is only entitled to a total credit of \$50 (10 days x \$5 = \$50). Since our review is *de novo*, we modify the credit to \$50.

¶ 17 B. Crime Detection Network Assessment

¶ 18 Defendant next argues the trial court erred in imposing the \$50 crime-detection-network assessment. The State concedes this assessment was improper. We accept the State's concession.

¶ 19 The propriety of the imposition of fines and fees raises a question of statutory interpretation and is subject to *de novo* review. *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 282, 856 N.E.2d 422, 427 (2006). A sentence which does not conform to a statutory requirement is void and may be attacked at any time. *People v. Thompson*, 209 Ill. 2d 19, 27, 805 N.E.2d 1200, 1204-05 (2004).

¶ 20 The Anti-Crime Advisory Council Act provides for the creation of local anti-crime programs. 20 ILCS 3910/5 (West 2010). In turn, sections 5-6-3 and 5-5-3.1 of the Unified Code of Corrections authorize the collection of money from a defendant who is sentenced to probation, supervision, or conditional discharge to be contributed to a local anti-crime program as defined by section 7 of the Anti-Crime Advisory Council Act. 730 ILCS 5/5-6-3(b)(12), (b)(13) (West 2010); 730 ILCS 5/5-6-3.1(b)(12), (b)(13) (West 2010). No similar provisions, however, authorize the imposition of crime fines for the purpose of reimbursing local anti-crime programs when a defendant is sentenced to incarceration. *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002); see also 730 ILCS 5/5-9-1, 9-1.1, 9-1.4 (West 2010).

¶ 21 Here, defendant was not sentenced to probation, supervision, or conditional discharge and, thus, the \$50 crime-detection-network assessment was improper. This assessment is void and we vacate it.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm in part as modified and vacate in part, modifying the sentence credit available for crediting against fines to \$50 and vacating the crime-detection-network assessment. We remand for issuance of an amended sentencing judgment so reflecting. As part of our judgment, we award the State its \$50 statutory assessment against defendant as

costs of this appeal.

¶ 24 Affirmed in part as modified and vacated in part; cause remanded with directions.