

NOTICE  
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2012 IL App (4th) 110464-U

NO. 4-11-0464

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
October 22, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RICK A. ALEXANDER,	)	No. 10CF1207
Defendant-Appellant.	)	
	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* The appellate court (1) vacated improperly imposed \$200 DNA analysis fee, (2) remanded for issuance of an amended sentencing judgment reflecting (a) defendant was convicted of a Class 2 felony, (b) imposition of \$5,000 mandatory DUI fine, (c) imposition of \$1,000 mandatory DUI equipment fine, (d) mandatory \$50 roadside memorial fund fine, and (e) recalculation of mandatory surcharges.
- ¶ 2     On July 16, 2010, the State charged defendant, Rick A. Alexander, by information that on June 30, 2010, he committed the offense of aggravated driving with a blood alcohol concentration of 0.08 or more (625 ILCS 5/11-501(d)(2)(D) (West 2010)). The information alleged defendant had four previous driving under the influence (DUI) violations, making his offense a Class 1 felony. In April 2011, after a trial, a jury found defendant guilty of driving with a blood alcohol concentration of 0.08 or more. In May 2011, the trial court sentenced defendant to seven years' imprisonment with 220 days' credit and imposed a \$200 deoxyribonucleic acid

(DNA) analysis fee and a \$2,500 fine.

¶ 3 On appeal, defendant argues (1) the trial court improperly imposed a \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4-3(j) (West 2010)) because he previously submitted a DNA sample and (2) the court erroneously identified his conviction as a Class 1 felony offense when the record showed defendant had three previous DUI convictions, making his conviction a Class 2 felony offense. The State concedes the court (1) improperly imposed the \$200 DNA analysis fee and (2) incorrectly identified his conviction as a Class 1 felony. The State asserts (1) the court improperly imposed a \$2,500 fine rather than the \$5,000 mandatory minimum fine (625 ILCS 5/11-501(d)(2)(C) (West 2010) (eff. Aug. 11, 2009)), (2) \$1,000 of that \$2,500 fine was improperly allocated as a DUI equipment fine (625 ILCS 5/11-501.01(f) (West 2010) (eff. Jan. 1, 2009)), (3) the court failed to impose a \$50 roadside memorial fine (730 ILCS 5/5-9-1.18 (West 2010) (eff. Aug. 25, 2009 (renumbered 730 ILCS 5/5-9-1.18 by P.A. 96-1000, § 620 (eff. July 2, 2010))))), and (4) mandatory surcharges must be recalculated.

¶ 4 I. BACKGROUND

¶ 5 In July 2010, the State charged defendant by information that on June 30, 2010, he committed the offense of aggravated driving with a blood alcohol concentration of 0.08 or more and that defendant had four previous DUI violations, making his offense a Class 1 felony.

¶ 6 In August 2010, the trial court found defendant unfit to stand trial pursuant to section 104-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/104-10 (West 2010)) due to his severe alcohol dependency. In December 2010, the court found defendant fit to stand trial.

¶ 7 In January 2011, the State filed a second count of aggravated DUI with a

concentration of 0.08 or more (625 ILCS 5/11-501(d)(2)(D) (West 2010)) to reflect (1) certain errors contained in the first count, namely that the charge was not extended-term eligible or mandatorily consecutive to another felony count attributable to another Rick Alexander, and (2) a minimum fine of \$5,000.

¶ 8 In April 2011, a jury trial was held. The parties stipulated defendant's blood alcohol concentration was 0.239. Evidence presented at the trial is summarized as follows. During the evening of June 30, 2010, Officer Jeremy Hale of the Urbana police department arrived at an apartment building parking lot off Fletcher road in Urbana, Illinois. He observed defendant squatting next to the engine compartment of a Toyota automobile. As Hale approached defendant, he heard glass drop onto the ground. Hale observed a flask of vodka next to the front tire of the Toyota. Officer Matt Mecum of the Urbana police department arrived and observed Hale and defendant speaking next to the Toyota. Mecum also observed a vodka bottle sitting next to the Toyota's tire. Officer Hale asked defendant to perform field sobriety tests, including the finger dexterity test; the alphabet test starting with the letter "G" and stopping at the letter "T"; the one-legged-stand test for 30 seconds; the walk-and-turn test; and a horizontal gaze nystagmus (HGN) test. Based on defendant's performance during the field sobriety tests, Officer Hale believed defendant to be under the influence of alcohol. Defendant was placed under arrest and transported to the police station. There, police informed defendant of his *Miranda* rights. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Defendant admitted to Hale he had been driving around the Meijer grocery store parking lot that evening.

¶ 9 A rebuttal witness, Robert McNicholl, testified he interacted with defendant on July 16, 2011, in a Meijer parking lot. Defendant appeared disheveled and McNicholl called the

police when defendant got into his vehicle. McNicholl then observed defendant drive off in the parking lot and continue onto city streets. A jury found defendant guilty of aggravated DUI.

¶ 10 At the May 2011 sentencing hearing, the trial court entered the following on the record:

"[Defendant] was arraigned on a [C]lass one felony. There were four prior offenses alleged to have been occurred by the state. The presentence report indicates there are three prior DUI offenses, and court services' conclusion is that one of the four priors that the [S]tate had believed attached to [defendant] was not [defendant], but another Mr. Alexander with a different date of birth.

If there are no additions or corrections or evidence with respect to the issue raised in the presentence report by the [S]tate and the [S]tate stipulates, the sentencing range by the court in this matter is no longer is [*sic*] a [Class] one [felony]. It's not four to fifteen nonprobationable, it is three to seven nonprobationable for a fourth DUI."

The assistant State's Attorney confirmed this was defendant's fourth DUI conviction as she had reviewed the mug shots of the DUI conviction in question and determined it was a different Rick Alexander. The State did not present additional evidence and defendant presented a letter from Dr. Lawrence Jeckel. Defendant exercised his right to address the court. The trial court considered the evidence and arguments presented. The court sentenced defendant to seven years' imprisonment with credit for 220 days served. Additionally, the court ordered defendant to pay a

\$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code (730 ILCS 5/5-4-3(j) (West 2010)) and a fine of \$2,500. The court did not mention any other assessments.

¶ 11 We take judicial notice of the Champaign County Clerk account summary printout showing: (1) entry for "fines" in the amount of \$1,500, (2) entry for "DUI new equipment" in the amount of \$200, (3) entry for "DUI-80% IL Gener[al]" in the amount of \$800, (4) entry for "trauma fund" in the amount of \$100, and (5) entry for "spinal cord resear[ch]" in the amount of \$5. The account summary does not indicate a \$5 per-day credit for the 220 days served.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues (1) the trial court improperly imposed a \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code (730 ILCS 5/5-4-3(j) (West 2010)) because he previously submitted a DNA sample and (2) the court erroneously identified his conviction as a Class 1 felony offense on the sentencing judgment when the record showed defendant had three previous DUI convictions, making his conviction a Class 2 felony offense. The State concedes the court (1) improperly imposed the \$200 DNA analysis fee and (2) incorrectly identified his conviction as a Class 1 felony on the sentencing judgment. The State asserts (1) the court improperly imposed a \$2,500 fine rather than the \$5,000 mandatory minimum fine (625 ILCS 5/11-501(d)(2)(C) (West 2010)), (2) \$1,000 of that fine was improperly allocated as a DUI equipment fine (625 ILCS 5/11-501.01(f) (West 2010)), (3) the court failed to impose a \$50 roadside memorial fine (730 ILCS 5/5-9-1.18 (West 2010)), and (4) mandatory surcharges must be recalculated. Defendant concedes the \$5,000 mandatory minimum fine must be imposed and the mandatory surcharges must be recalculated, but he challenges imposition of

the \$50 roadside memorial find fine. We address each in turn.

¶ 15 A. DNA Analysis Fee

¶ 16 First, defendant argues the trial court lacked the authority to impose the \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code (730 ILCS 5/5-4-3(j) (West 2010)) because defendant previously registered. The payment of the section 5-4-3 DNA analysis fee is permitted only where that defendant is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285, 296-97, 950 N.E.2d 668, 676 (2011). The State concedes error. We accept the State's concession and vacate the \$200 DNA analysis fee.

¶ 17 B. Identification of Defendant's Conviction as Class 2 Felony Offense

¶ 18 Second, defendant argues the trial court erroneously identified defendant's conviction as a Class 1 felony offense on the sentencing judgment when he was only eligible for a Class 2 felony conviction. A fourth conviction for DUI is a Class 2 felony. 625 ILCS 5/11-501(d)(2)(C) (West 2010). At the May 2011 sentencing hearing, the PSI identified three prior DUI convictions attributable to defendant, and the parties agreed the instant offense was a Class 2 felony. The State concedes error. We accept the State's concession and remand for issuance of an amended sentencing judgment to reflect defendant's conviction is a Class 2 felony offense.

¶ 19 C. Mandatory Fines

¶ 20 The State argues the trial court failed to properly assess (1) the \$5,000 mandatory fine for a fourth DUI violation in accordance with section 11-501(d)(2)(C) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(d)(2)(C) (West 2010)) and (2) a \$50 roadside memorial fine pursuant to section 5-9-1.18 of the Unified Code (730 ILCS 5/5-9-1.18 (West 2010)). Additionally, the State contends the circuit clerk allocated \$1,000 of the DUI fine "to the

additional administrative sanctions of \$200 and \$800 that apply to repeat offenders" and defendant's DUI fine is short \$3,500. Defendant concedes his mandatory DUI fine must be increased to \$5,000 from \$2,500 but rejects that he is "responsible for the \$1,000 error in allocation caused by the circuit clerk." Further, defendant asserts this court does not have jurisdiction to address the roadside memorial fine. Specifically, defendant contends "[u]nlike the State's request to correct the mandatory \$5,000 fine, this argument cannot be justified as being an attack on a void order." We agree defendant's DUI fines are \$3,500 less than mandatorily required but for different reasons than argued by the State.

¶ 21 A trial court's sentence is void where it does not conform to a statutory requirement. *People v. Mitchell*, 395 Ill. App. 3d 161, 166, 916 N.E.2d 624, 629 (2009) (quoting *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995)). A trial court exceeds its authority if it orders a lesser sentence than what the statute mandates, including failing to impose statutory fines. *Mitchell*, 395 Ill. App. 3d at 166, 916 N.E.2d at 629. This court may reimpose mandatory fines. *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E.2d 1128, 1133 (2010).

¶ 22 Section 11-501(d)(2)(C) of the Vehicle Code, provides, in relevant part as follows:

"A fourth violation of this Section or a similar provision is a Class 2 felony, for which a sentence of probation or conditional discharge may not be imposed. If at the time of the violation, the alcohol concentration in the defendant's blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, a mandatory minimum fine of \$5,000 shall be

imposed in addition to any other criminal or administrative sanction." 625 ILCS 5/11-501(d)(2)(C) (West 2010).

¶ 23 Section 11-501.01(f) of the Vehicle Code, provides, in relevant part:

"If the person has been previously convicted of violating Section 11-501 or a similar provision of a local ordinance, the fine shall be \$1,000, and the circuit clerk shall distribute \$200 to the law enforcement agency that made the arrest and \$800 to the State Treasurer for deposit into the General Revenue Fund." 625 ILCS 5/11-501.01(f) (West 2010).

¶ 24 *1. Mandatory DUI Fines*

¶ 25 Here, the trial court ordered defendant to pay a \$2,500 fine. As section 11-501(d)(2)(C) of the Vehicle Code required a \$5,000 mandatory fine upon a fourth DUI violation, the court erred in ordering a \$2,500 fine. The State concedes error, and we remand for imposition of a \$5,000 fine in accordance with section 11-501(d)(2)(C) of the Vehicle Code (625 ILCS 5/11-501(d)(2)(C) (West 2010)).

¶ 26 *2. DUI Equipment Fund Assessment*

¶ 27 The State asserts \$1,000 of the trial court's DUI fine was allocated by the circuit clerk in accordance with section 11-501.01(f) of the Vehicle Code. The court's oral sentencing pronouncement, written judgment, and docket entry fail to specifically mention a fine pursuant to section 11-501.01(f). The circuit clerk allocated \$1,000 of the \$2,500 DUI fine to this fine, and its actions are tantamount to imposing a fine pursuant to section 11-501.01(f) where the court did not impose such a fine. This exceeds the circuit clerk's authority and is a void act. Therefore, we



299, 311, 919 N.E.2d 875, 884 (2009) (" 'when the issue is whether the force of the statutory language is mandatory or permissive, then 'shall' does usually indicate the legislature intended to impose a mandatory obligation.' ") (quoting *People v. Robinson*, 217 Ill. 2d 43, 54, 838 N.E.2d 930, 936 (2005)); *People v. Coleman*, 391 Ill. App. 3d 963, 977-84, 909 N.E.2d 952, 965-70 (2009) (discussing statutory language of mandatory fines). As the trial court did not impose this mandatory fine, we remand for imposition of a \$50 fine pursuant to section 5-9-1.18 of the Unified Code (730 ILCS 5/5-9-1.18 (West 2010)).

¶ 33 *4. Recalculation of Other Fines*

¶ 34 Defendant concedes correction of his mandatory fines will increase the Violent Crimes Victims Assistance Act (VCVA) fine (725 ILCS 240/10(b) (West 2010)) and the criminal-traffic surcharge (730 ILCS 5/5-9-1(c) (West 2010)). We accept defendant's concession and remand for proper calculation of these surcharges.

¶ 35 Defendant is entitled to a statutory \$5 per-day credit pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)) for the 220 days served prior to sentencing. Defendant's statutory credit equals \$1,100.

¶ 36 **III. CONCLUSION**

¶ 37 For the foregoing reasons, we (1) vacate the \$200 DNA analysis fee pursuant section 5-4-3(j) of the Unified Code (730 ILCS 5/5-4-3(j) (West 2010)); (2) remand for issuance of an amended sentencing judgment reflecting same and showing the conviction is a Class 2 felony, and (3) remand with directions for the trial court to (a) increase the \$2,500 fine to the \$5,000 mandatory fine pursuant to section 11-501(d)(2)(C) of the Vehicle Code (625 ILCS 5/11-501(d)(2)(C) (West 2010)); (b) impose the \$1,000 mandatory fine pursuant to section 11-

501.01(f) of the Vehicle Code (625 ILCS 5/11-501.01(f) (West 2010)); (c) impose the \$50 mandatory fine pursuant to section 5-9-1.18 of the Unified Code (730 ILCS 5/5-9-1.18 (West 2010)); and (d) modify the VCVA fine in accordance with the statute (725 ILCS 240/10(b) (West 2010)) and the criminal-traffic surcharge in accordance with the statute (730 ILCS 5/5-9-1(c) (West 2010)). We vacate in part the trial court's sentencing judgment, and remand with directions. We otherwise affirm as modified.

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