

NOTICE
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2012 IL App (4th) 110503-U

NO. 4-11-0503

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 10, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
TYRONE SMITH,)	No. 10CF127
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court remanded with directions to (1) apply a \$40 credit against defendant's fines, (2) impose a \$30 mandatory fine for juvenile record expungement, (3) increase the VCVA assessment by \$4, and (4) increase the lump-sum surcharge by \$10.
- ¶ 2 Following a February 2011 bench trial, defendant, Tyrone Smith, was convicted of driving while his license was revoked (625 ILCS 5/6-303(a) (West 2010)) and failing to yield to a stationary emergency vehicle (625 ILCS 5/11-907(c) (West 2010)) (Scott's Law violation). The trial court sentenced him to 2 years' probation conditioned on the statutory minimum sentence of 180 days in jail (625 ILCS 5/6-303(d-3) (West 2010)) and awarded him 8 days of sentence credit and \$40 fine credit.
- ¶ 3 Defendant appeals, arguing the Livingston County circuit clerk erred in failing to apply the \$40 *per diem* credit awarded by the trial court against his fines. We affirm as modified

and remand with directions to issue an amended sentencing order.

¶ 4

I. BACKGROUND

¶ 5 In May 2010, defendant was pulled over for committing a Scott's Law violation (625 ILCS 5/11-907(c) (West 2010)). Upon being approached by the police officer, defendant admitted his license was revoked. Defendant was arrested for driving on a revoked license (625 ILCS 5/6-303(a) (West 2010)).

¶ 6 At trial, defendant admitted he had been driving on a revoked license but testified he was unable to pull into the left lane because there was another vehicle beside him. The trial court found defendant guilty of driving while his license was revoked and of the Scott's Law violation. The court sentenced defendant to 2 years' probation subject to the statutory minimum sentence of 180 days in jail for driving while his license was revoked and imposed various fines and fees.

¶ 7 This appeal followed.

¶ 8

II. ANALYSIS

¶ 9 Defendant argues the Livingston County circuit clerk erred in failing to apply the \$40 *per diem* credit awarded by the trial court against his fines. The State concedes defendant is entitled to the \$40 *per diem* credit, but it asserts this court should impose a mandatory \$30 juvenile record expungement fine, increase the violent-crime-victims-assistance assessment by \$4, and increase the lump-sum surcharge by \$10.

¶ 10 A. *Per Diem* Credit Against Fines for Time Spent in Presentence Custody

¶ 11 Defendant asserts he is entitled to *per diem* credit in the amount of \$40 against his fines for time spent in presentence custody. The State concedes defendant is entitled to credit for

time spent in pretrial custody which may be applied to any fines assessed against him. We agree and accept the State's concession.

¶ 12 Sentence credit against a fine based on time served in pretrial custody is governed by section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), which provides in relevant part:

"(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." *Id.*

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).

¶ 13 In this case, the trial court awarded defendant \$40 credit for eight days spent in presentence custody. However, the Livingston County circuit clerk failed to apply this credit toward defendant's fines. Thus, we remand for issuance of an amended sentencing judgment to reflect this credit.

¶ 14 B. Mandatory \$30 Fine for Expungement of Juvenile Records

¶ 15 The State asserts this court should impose the mandatory \$30 fine to fund expungement of juvenile records. We agree.

¶ 16 Section 5-9-1.17(a) of the Unified Code of Corrections provides, "[t]here *shall* be added to every penalty imposed in sentencing for a criminal offense an additional fine of \$30 to

be imposed upon a plea of guilty or finding of guilty resulting in a judgment of conviction" for the purpose of funding juvenile record expungements. (Emphasis added.) 730 ILCS 5/5-9-1.17(a) (West 2010).

¶ 17 Defendant did not file a reply brief and does not address the State's contention of the mandatory juvenile-record-expungement fine. This is a mandatory fine and may be attacked at any time. See *People v. Ousley*, 235 Ill. 2d 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, 977-83, 909 N.E.2d 952, 965-70 (2009) (discussing statutory language of mandatory fines). According to the Livingston County circuit clerk's records, this fine was not assessed. Therefore, we remand for issuance of an amended sentencing judgment to reflect this mandatory \$30 fine.

¶ 18 C. Violent-Crime-Victims-Assistance (VCVA) Assessment

¶ 19 The State also asserts this court should increase defendant's \$52 violent-crime-victims-assistance assessment by \$4. We agree.

¶ 20 Pursuant to section 10(b) of the Violent Crime Victims Assistance Act, where other fines are imposed, the penalty assessed a defendant equals "\$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010).

¶ 21 Here, defendant's total fines should equal \$550, *i.e.*, \$530 fine (includes \$30 fine for juvenile record expungements) and \$20 child-advocacy-center fee. Although referred to as a "fee," we note the children's-advocacy-center fee is actually a fine. *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 19, 976 N.E.2d 643. As such, the VCVA assessment should be \$56, or \$4

for each \$40 in fines (\$550 divided by \$40 equals 13 plus a "fraction thereof" multiplied by \$4 equals \$56). See 725 ILCS 240/10(b) (West 2010); *People v. Vlahon*, 2012 IL App (4th) 110229, ¶ 38, 977 N.E.2d 327. Thus, we remand for issuance of an amended sentencing judgment so reflecting.

¶ 22

D. Lump-Sum Surcharge

¶ 23 The State also asserts this court should increase defendant's \$130 lump-sum surcharge by \$10. We agree.

¶ 24

Section 5-9-1(c) of the Unified Code of Corrections provides, in part, as follows:

"There shall be added to every fine imposed in sentencing for a criminal or traffic offense *** an additional penalty of \$10 for each \$40, or fraction thereof, of fine imposed." 730 ILCS 5/5-9-1(c) (West 2010).

¶ 25

In this case, the sum of defendant's fines equals \$550. Thus, the lump-sum surcharge should be \$140, or \$10 for each \$40 in fines (\$550 divided by \$40 equals 13 plus a "fraction thereof" multiplied by \$10 equals \$140). See 730 ILCS 5/5-9-1(c) (West 2010).

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm as modified and remand with directions for issuance of an amended written sentencing judgment reflecting (1) a \$40 credit against defendant's fines, (2) a \$30 fine for juvenile record expungement, (3) a \$4 increase in the VCVA assessment, and (4) a \$10 lump-sum surcharge increase. As part of our judgment, since the State successfully defended a portion of this appeal, we award the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479

N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 28 Affirmed as modified and cause remanded with directions.