

<p><b>NOTICE</b>  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).</p>
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NOS. 4-11-0546, 4-11-0547, 4-11-0549, 4-11-0550 cons.

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
MICHAEL A. WEST,	)	Nos. 09CF1293
Defendant-Appellant.	)	10CF1851
	)	00TR1069
	)	03TR2292
	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices McCullough and Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) Where the trial court's order denying defendant's petition for revocation of fine was a final and appealable order as a collateral action, this court had jurisdiction to consider the merits of defendant's claim.
- ¶ 2 (2) Where the trial court erred in failing to award defendant monetary credit in the amount of \$5 per day toward the fines imposed at sentencing, we reverse the sentencing judgment and remand with directions to award the appropriate credit.
- ¶ 3 Defendant, Michael A. West, pleaded guilty to driving while his license was revoked or suspended in four separate circuit court cases (Macon County case Nos. 09-CF-1293, 10-CF-1851, 00-TR-1069, 03-TR-2292). On March 1, 2011, at a sentencing hearing, combining case Nos. 09-CF-1293 and 10-CF-1851, the trial court sentenced defendant to consecutive terms of two years and two years, six months in prison, respectively. 625 ILCS 5/6-303(d-3), (d-2) (West 2008) (six prior

DWSs, three prior DWSs). The court awarded defendant credit for 73 days spent in pretrial custody. However, the court made no mention of monetary credit in the amount of \$5 per day toward his imposed fines for each day he spent in pretrial custody (see 725 ILCS 5/110-14(a) (West 2010)), totaling \$39.25.

¶ 4 On May 27, 2011, in each of the four circuit court cases cited above, defendant filed a petition to revoke his fines pursuant to section 5-9-2 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-9-2 (West 2010)), alleging he was financially unable to pay the fines imposed. On June 1, 2011, the trial court denied defendant's petition. This appeal followed. Defendant's appeal in case No. 09-CF-1293 was docketed in this court as case No. 4-11-0546; his appeal in case No. 10-CF-1851 was docketed in this court as case No. 4-11-0547; his appeal in case No. 00-T-R1069 was docketed in this court as case No. 4-11-0549; and his appeal in case No. 03-TR-2292 was docketed in this court as case No. 4-11-0550. We have consolidated these appeals for review.

¶ 5 Defendant appeals from the trial court's denial of his petition to revoke the fines, claiming he is entitled to a monetary credit of \$365 for each day spent in pretrial custody (73 days) at the rate of \$5 per day. His fines totaled only \$39.25, and therefore this credit would relieve him of the financial obligation to pay the fines imposed.

¶ 6 The State does not contest the merits of defendant's claim and concedes defendant is entitled to the claimed credit. However, the State only concedes this issue if we disagree with the State's primary claim that this court lacks jurisdiction to consider defendant's appeal on its merits. According to the State, we lack jurisdiction to consider the claim because the order appealed (the trial court's order denying defendant's motion to revoke his fines) is not a final and appealable order. The State claims the final judgment in case Nos. 09-CF-1293 and 10-CF-1851 was entered on March

1, 2011, and 30 days had long passed before the notice of appeal was filed.

¶ 7 Following the reasoning of our sister court, we disagree with the State and find we do have jurisdiction to review defendant's claim. In *People v. Mingo*, 403 Ill. App. 3d 968, 971 (2010), the Second District determined that a petition brought under section 5-9-2 of the Unified Code (730 ILCS 5/5-9-2 (West 2010)) was intended to be a "freestanding action[], collateral to the original action," and was not required to be filed within 30 days of the final judgment.

¶ 8 The language of section 5-9-2 supports the court's holding. It provides as follows:

"Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code [(625 ILCS 5/15-101 to 319 (West 2010) (a chapter addressing weight and load limits))], the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2 (West 2010).

Analyzing the statutory language and the apparent legislative intent, we conclude we have jurisdiction to review defendant's appeal based on the following three reasons: (1) the express language of this statute does not impose a time limit (*Mingo*, 403 Ill. App. 3d at 971); (2) requiring a petition be filed within 30 days would render this section superfluous and meaningless since, if that was the case, such a claim could be made in a section 5-8-4.5-50(d) motion of the Unified Code (730 ILCS 5/5-4.5-50(d) (West 2010) (governing a motion to reduce a sentence), without filing a separate petition (*Mingo*, 403 Ill. App. 3d at 971-72); and (3) the good-cause requirement in section 5-9-2 suggests the legislature intended to provide a defendant relief *in the future* if hardship circumstances arose (*Mingo* 403 Ill. App. 3d at 972). Therefore, we agree with the Second District and conclude a trial court's order on a petition for revocation of a fine is appealable as a collateral action, not

subject to the ordinary 30-day jurisdictional time limit. *Mingo*, 403 Ill. App. 3d at 972.

¶ 9 Finding we have jurisdiction to review defendant's claim, and agreeing he is entitled to monetary credit in the amount of \$5 per day toward his fines in No. 09-CF-1293, we reverse the denial of defendant's petitions to revoke his creditable fines and remand with directions to award defendant the appropriate credit toward the fines imposed. As defendant raises no issues pertaining to the other cases, we dismiss those appeals.

¶ 10 No. 4-11-0546, Reversed and remanded with directions.

¶ 11 No. 4-11-0547, Appeal dismissed.

¶ 12 No. 4-11-0549, Appeal dismissed.

¶ 13 No. 4-11-0550, Appeal dismissed.