

probation was revoked, and he was sentenced to two years of probation and ordered to pay the balance of the fine previously imposed. On September 11, 2000, the defendant's probation was revoked again. He was sentenced to five years' imprisonment and was ordered to pay the balance of any previously imposed fines. The defendant did not file any posttrial or postsentencing motions, direct appeal, or postconviction petitions.

¶4 Nine years later, on March 30, 2009, the defendant filed a motion requesting \$5-a-day credit toward his fines, court costs, and restitution for each day that he spent in pretrial custody. The court denied the defendant's motion on March 31, 2009, holding that the final judgment was entered more than eight years ago. Subsequently, on September 17, 2009, the defendant filed a second motion and attached to it a "Sheriff's Certificate of time defendant held in custody," which indicated that the defendant was held in Jefferson County jail for 249 days. The court denied the defendant's second motion on September 23, 2009, holding that the motion was previously denied and filed more than nine years after final judgment was entered. The defendant filed a timely notice of appeal on October 15, 2009.

¶5 Section 110-14 of the Code (725 ILCS 5/110-14 (West 2008)) provides that a defendant who is incarcerated on a bailable offense, and who, upon conviction, is assessed a fine, is entitled to a \$5 credit toward his fine for each day spent in custody prior to sentencing, including the day he was taken into custody. *People v. Hare*, 119 Ill. 2d 441, 452 (1988). The defendant admits that he did not apply for the credit at the trial level or in a direct appeal. However, the defendant notes that failure to apply for the credit in the trial court did not result in a waiver of the statutory right to take the credit on appeal. Normal rules of waiver do not apply to the simple ministerial act of granting the credit. *People v. Woodard*, 175 Ill. 2d 435, 442 (1997).

¶6 In response, the State argues that despite the defendant's appearances in court when his probation was revoked, he failed to file any motion pursuant to section 110-14 of the

Code until March 30, 2009. Even assuming that a defendant's application was intended as a precondition to the statutory right to the credit, section 110-14 of the Code remains silent concerning any time frame or procedural stage for such application to occur. *Woodard*, 175 Ill. 2d at 446. The State asserts that by the time the defendant sought application for credit in March 2009, the court was without jurisdiction for many years. See *People v. Flowers*, 208 Ill. 2d 291, 303 (2003) (the jurisdiction of the courts to reconsider and modify their judgment is not indefinite). The Illinois Supreme Court in *Flowers* explained that when more than 30 days have elapsed since sentencing and the trial court has not extended the limitation period, "the trial court is divested of jurisdiction to entertain a defendant's motion to vacate the judgment or reconsider the sentence." *Flowers*, 208 Ill. 2d at 303. Normally, the authority of the trial court to alter a sentence terminates after 30 days. This 30-day limitation is incorporated into Supreme Court Rule 604(d) (eff. July 1, 2006), which governs postjudgment motions in cases where the defendant has pleaded guilty. Rule 604(d) provides, "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court *** a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 7 According to the State, by the time the defendant filed his motion, the court had been without jurisdiction for many years. While it is true that the defendant in the instant case is not seeking to vacate the judgment or reconsider the sentence, the premise is the same that a court does not hold indefinite jurisdiction over a matter such that a defendant can file motions whenever he pleases. The defendant filed his motion over eight years after the court entered final judgment, long after the court had lost subject matter jurisdiction. Lack of subject matter jurisdiction is not subject to waiver. See *People v. Williams*, 53 Ill. App. 3d 335, 337 (1977). It follows that if the trial court did not have jurisdiction to hear the motions,

its orders denying the motions are void and null, leaving this court without any jurisdiction to review the case on appeal. See *Flowers*, 208 Ill. 2d at 307.

¶ 8 The defendant cites *People v. Caballero*, 228 Ill. 2d 79, 88 (2008), which held that the application for credit under section 110-14 of the Code may be raised for the first time on appeal from the dismissal of a postconviction petition, despite the fact that the defendant could have raised the issue in his direct appeal but did not, and despite the fact that such sentence credit is a statutory rather than a constitutional claim. The court in *Caballero* noted that section 110-14 of the Code is silent concerning any time frame or procedural stage during which such application either must or can be made, but then held that claims for \$5-a-day credit may be raised at any time and stage of court proceedings. *Caballero*, 228 Ill. 2d at 88. We note that the case cited by the defendant is distinguishable from the facts in the instant case. In the instant case, a final judgment had been entered nine years before the defendant filed his motion. The defendant failed to file any posttrial motions, postsentencing motions, postconviction petitions, or a direct appeal. Thus, the judgment entered against the defendant was a final judgment. Accordingly, there were no court proceedings in effect allowing the defendant to raise his claim at any time. The circuit court only had authority to dismiss the motions for lack of jurisdiction.

¶ 9 The appellate court can always examine jurisdiction, even *sua sponte*. *Board of Education of the City of Chicago v. Chicago Teachers Union Local 1*, 26 Ill. App. 3d 806, 813 (1975). The State argues that the trial court only had authority to dismiss the case for lack of jurisdiction and that this court has authority to review its jurisdiction and the trial court's jurisdiction. The record reflects that the trial court's order entered March 31, 2009, states "motion denied." The State argues that this appears to indicate that the trial court did not believe that it had jurisdiction to rule on the motion. The trial court does not have everlasting jurisdiction to hear a motion, even a motion based on a statutory right. The

defendant had ample opportunity to apply for the credit when he was convicted, during sentencing, or when his probation was revoked both times. There was no reason for the eight-year delay.

¶ 10 Accordingly, we conclude that because the circuit court does not have indefinite jurisdiction to entertain motions after a final judgment is entered, the circuit court, aware of its lack of jurisdiction, appropriately denied the motions where the defendant's motions were filed eight years after the circuit court had entered judgment. It follows that this court does not have jurisdiction and we must dismiss the defendant's appeal.

¶ 11 For the foregoing reasons, we are without jurisdiction to entertain this appeal. Therefore, the appeal is dismissed.

¶ 12 Appeal dismissed.