

**NOTICE:** 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).

2013 IL App (3d) 120732-U

Order filed September 4, 2013

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-12-0732
	)	Circuit No. 11-CM-1467
	)	
WALTER W. McCANN,	)	Honorable
	)	Carmen Goodman,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE O'BRIEN delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* (1) The record does not establish that the trial court imposed a new fine or fee against defendant upon remand. (2) Defendant is entitled to a credit against his fines.

¶ 2 Defendant, Walter W. McCann, pled guilty to battery (720 ILCS 5/12-3(a)(2) (West 2010)) and resisting a police officer (720 ILCS 5/31-1(a) (West 2010)). As part of its sentencing order, the trial court imposed fines and fees of \$161 in each case, for a total of \$322. Defendant appealed, and this court remanded the cause for the filing of a Rule 604(d) certificate and further

postplea proceedings. *People v. McCann*, No. 3-11-0934 (Apr. 11, 2012). Thereafter, defendant's motion to withdraw plea and vacate judgment was denied. Defendant appeals, arguing that the trial court imposed additional fines and fees upon remand and that he is entitled to a \$35 credit against his fines. We affirm defendant's sentence and grant him a credit against his fines.

¶ 3

### FACTS

¶ 4 Defendant was charged with battery (720 ILCS 5/12-3(a)(2) (West 2010)) and resisting a police officer (720 ILCS 5/31-1(a) (West 2010)). On October 3, 2011, defendant pled guilty to the charges in exchange for sentences of 12 months' court supervision and \$161 in fines and fees for the battery charge and 12 months' conditional discharge, 14 days in jail, and \$161 in fines and fees for resisting a police officer. The court accepted the plea and sentenced defendant according to the terms of the agreement. While doing so, the court noted that defendant's sentence included \$161 in fines and fees for each of the two offenses. The court also listed \$161 in fines and fees for each offense in its written sentencing orders.

¶ 5 On November 1, 2011, defendant filed a *pro se* motion to vacate plea. The trial court appointed the public defender to represent defendant, and a hearing was held on the motion. At the conclusion of the hearing, the trial court denied defendant's motion. Defendant appealed, and this court issued a minute order granting his motion to remand for further postplea proceedings due to counsel's failure to file a Rule 604(d) certificate. *McCann*, No. 3-11-0934.

¶ 6 On remand, defense counsel filed a new motion to withdraw defendant's guilty plea and two Rule 604(d) certificates. After a hearing, the trial court denied defendant's motion. The trial court's written order denying defendant's motion is followed in the record by a detailed list of the

finest and fees that were assessed against defendant. The list included drug court fees totaling \$15, a \$20 child advocacy center fee, and a \$45 fine. The sheet also indicated that defendant still owed \$161 of the \$322 assessed against him. Defendant appeals.

¶ 7

## ANALYSIS

¶ 8

### I. Fines and Fees

¶ 9 Defendant first argues that the trial court improperly increased his fines and fees upon remand. Section 5-4.5-50(d) of the Unified Code of Corrections states that a court may not increase a sentence once it is imposed. 730 ILCS 5/5-4.5-50(d) (West 2012). Consequently, because a fine is part of a defendant's sentence, a trial court is not permitted to increase defendant's fine upon remand. See *People v. Jones*, 223 Ill. 2d 569 (2006).

¶ 10 After our review of the record, we find no evidence to suggest that the trial court increased the fines and fees against defendant. Initially, we note that the trial court's original sentencing order included fines and fees for both offenses totaling \$322. While defendant points to certain parts of the record that indicate the total may have been \$161, other portions of the record, including the trial court's oral pronouncement and its written sentencing orders, indicate that defendant was assessed fines and fees totaling \$322 for the two offenses. Thus, even if the record contains some inconsistencies, where the trial court's oral pronouncement conflicts with a written order, the oral pronouncement controls. See *People v. Walker*, 386 Ill. App. 3d 1025 (2008). Therefore, we conclude that defendant was originally assessed \$322 in fines and fees.

¶ 11 Upon remand, the court denied defendant's motion to vacate, and a document was included in the record noting that defendant still owed \$161 from his \$322 in fines and fees from the two charges. Defendant attempts to argue that this document included a \$45 fine that was not

part of the original sentencing order. However, because this document is the only one in the record that details all of the specific fines and fees imposed upon defendant, it is impossible to tell whether defendant's argument is correct. See *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984) (an appellant has the burden to present a sufficiently complete record of the proceedings in the circuit court to support a claim of error). In the absence of a complete record, we must assume that the court's judgment conformed with the law and the evidence. *Id.* Here, the only numbers that we can compare are the total fines and fees assessed against defendant both at the time of sentencing and following the denial of his motion to withdraw plea. Because those charges equal \$322 in each instance, we do not find that the trial court improperly increased defendant's fines and fees upon remand.

¶ 12

## II. Presentence Credit

¶ 13 Defendant next argues that he is entitled to \$35 in presentence custody credit against his drug court and child advocacy center fees. Section 110-14 of the Code of Criminal Procedure of 1963 provides that a defendant who is assessed a fine is allowed a credit of \$5 for each day spent in custody on a bailable offense for which he did not post bail. 725 ILCS 5/110-14 (West 2010). That credit can be applied to fines; however, it cannot be applied to fees. *Jones*, 223 Ill. 2d 569. A charge is a fine, even if the legislature labels it a fee, if it is part of the punishment for a conviction, and not established to recoup expenses incurred by the State in prosecuting the defendant. *Id.*

¶ 14 Here, defendant spent seven days in pretrial custody; therefore, he is entitled to a credit of up to \$35. That credit can be applied to defendant's \$20 drug court fees (see *People v. Unander*, 404 Ill. App. 3d 884 (2010) (drug court fees are fines where the record fails to show that the fee

was intended to reimburse the State for prosecuting the defendant)) and his \$15 child advocacy center fee (see *People v. Jones*, 397 Ill. App. 3d 651 (2009) (a lack of relevant connection between the offense and the fee charged indicates that the child advocacy center fee is a fine)). Accordingly, we modify those charges to reflect the credit.

¶ 15

#### CONCLUSION

¶ 16 Defendant is granted a credit against his fines, and the judgment of the circuit court of Will County is otherwise affirmed.

¶ 17 Affirmed as modified.