

NOTICE  
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2013 IL App (4th) 120375-U  
NO. 4-12-0375  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
October 29, 2013  
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.	)	Sangamon County
ROBERT SCHAEFFER,	)	No. 08CF241
Defendant-Appellant.	)	
	)	Honorable
	)	Patrick W. Kelley,
	)	Judge Presiding.

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

**ORDER**

- ¶ 1 *Held:* The appellate court (1) held the trial court did not abuse its discretion in sentencing defendant, (2) held defendant is entitled to a total of 1,485 days' presentence credit, (3) vacated fines imposed by the circuit clerk, and (4) remanded with directions for the trial court to amend the sentencing judgment and reimpose mandatory fines.
- ¶ 2 In March 2012, a Sangamon County jury found defendant, Robert Schaeffer, guilty of four counts of aggravated discharge of a firearm (720 ILCS 5/12-4.2(a)(1), (a)(2) (West 2008)). In April 2012, the trial court sentenced defendant to 22 years' imprisonment on count I and 10 years' imprisonment on counts II, III, and IV, with all sentences to run concurrently.
- ¶ 3 On appeal, defendant argues (1) the trial court abused its discretion in imposing sentence because it (a) used a default method of starting in the middle of the sentencing range, and (b) considered defendant's refusal to take responsibility for his actions as an aggravating

factor; and (2) various fines were improperly imposed. We affirm in part, vacate in part, and remand with directions.

¶ 4

## I. BACKGROUND

¶ 5 In April 2008, the State charged defendant in Sangamon County case No. 08-CF-241 with four counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1), (a)(2) (West 2008)) (counts I, II, III, and IV) and one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)) (count V). Count V was later dismissed.

¶ 6

### A. Defendant's Fitness

¶ 7 On September 22, 2008, the trial court entered an order for examination to determine if defendant was fit. In May 2009 and again in March 2011, the parties stipulated defendant was unfit to stand trial. On September 2, 2011, the parties stipulated defendant's fitness was restored.

¶ 8

### B. Defendant's Jury Trial

¶ 9 On March 6, 2012, defendant's jury trial commenced and the following evidence was presented: On March 16, 2008, defendant was loitering around the entrance of the Fresh Express gas station in Springfield. Defendant requested cigarettes from the store clerk but would not pay for them. After some time, defendant then fired four shots and ran out of the store. One of the shots struck a second store clerk. The victim was shot in the waist area and suffered a broken iliac bone. Doctors left bullet fragments in the victim's body and police located the three other rounds in the store. Springfield police responded to the gas station but were not able to apprehend defendant that day.

¶ 10

On March 18, 2008, police arrested defendant. Police recovered a .32-caliber

revolver from the residence where defendant was arrested. This revolver was used to fire the shots at the gas station.

¶ 11 During an interview with police, defendant admitted he used a .32-caliber revolver and shot four times in the gas station. Defendant told police he felt like the store was short-changing him and speaking badly of him in Arabic. He expressed that he was sorry for what happened.

¶ 12 Defendant did not present evidence.

¶ 13 The jury found defendant guilty of all four counts.

¶ 14 C. Sentencing and Posttrial Motions

¶ 15 On April 11, 2012, the trial court held a sentencing hearing. The State introduced a presentencing investigation report (PSI). The PSI stated on November 3, 2008, defendant attempted to escape by running out of a courtroom during a court appearance for the instant case. He was charged in Sangamon County case No. 08-CF-1129 and later found guilty of escape and aggravated battery. (The appeal in Sangamon County case No. 08-CF-1129 is docketed in this court as No. 4-12-0145.) In February 2012, he was sentenced in No. 08-CF-1129 to concurrent terms of five years' imprisonment for escape and three years' imprisonment for aggravated battery with credit for 1,200 days. The PSI stated in June 2002, defendant was convicted of second-degree theft in Iowa and sentenced to 10 years' imprisonment. Defendant introduced a psychological evaluation report used in his fitness proceedings.

¶ 16 During arguments, defense counsel stated,  
"I'm familiar with the Court's propensities in terms of sentencing. I believe it is the Court's practice to start in the middle of the range,

generally speaking. If we were to apply that procedure here, the middle range, at least on Count I would be a sentence of imprisonment of eighteen years."

Counsel recommended a sentence of 15 years' imprisonment on count I. Counsel added,

"It is true [defendant] didn't plead guilty, accept responsibility, but again, I think that's indicative of his mental state. Why in the world would an individual want to go to trial when they are caught on video, when the eye-witness is their own aunt, and then they subsequently confess to the police department while it is being audio-recorded? It doesn't make any sense, and I think that's indicative of his mental illness."

¶ 17 In announcing sentence, the trial court stated:

"[Defense counsel] has gone to school, he does know that I generally start in the middle of the range and slide one way or another, depending on the presence of aggravating or mitigating factors. Obviously if there are mitigating factors, the Defendant has no criminal history, which is an aggravating factor, but if there are only mitigating factors, no aggravating factors, the sentence would be towards the very lowest end of the range, and the converse is also true.

Here there is one mitigating factor, and that is the Defendant's mental status. I will take that into account and not

give the Defendant a sentence at the maximum end of the range of thirty years, but that's really the only mitigating factor.

There is not much good to say about this man, honestly. He's sired five children, committed crimes nearly all his life, and really this man has nothing positive to offer, but he does have that one mitigating factor.

On the aggravating side I look at the Defendant's criminal history, the danger he has presented to the community, and I think a sentence above the middle of the range is appropriate, and I come out at twenty-two years. It is an inexact science, there is no way to scientifically come up with a number, but that's the number I come up with, a number that adequately addresses the aggravating factor here, primarily the criminal history, and also takes into account the mitigation of his mental state.

I also note the Defendant did not accept responsibility. Obviously I'm not going to punish him for going to trial, but the fact that he has never accepted responsibility, other than perhaps in the admission he made to police, is something that is worth at least considering \*\*\*."

The court sentenced defendant as stated. The court ordered defendant to pay court costs. The written judgment states "defendant is entitled to receive credit for time actually served in custody of 1257 days as of the date of this order for Sangamon County Circuit Court cases 08-CF-1129

and 08-CF-241." The written judgement states the sentence is consecutive to the sentence imposed in Sangamon County case No. 08-CF-1129.

¶ 18 In April 2012, defendant filed a motion to reconsider his sentence. The trial court denied the motion.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues (1) the trial court abused its discretion in imposing sentence because it (a) used a default method of starting in the middle of the sentencing range, and (b) considered defendant's refusal to take responsibility for his actions as an aggravating factor; and (2) various fines were improperly imposed. We address defendant's contentions in turn.

¶ 22 A. Defendant's Sentencing Claim

¶ 23 Defendant admits his motion to reconsider his sentence may be "insufficiently specific to preserve the errors" raised by his sentencing argument. Defendant's motion to reconsider raised whether the trial court improperly considered sentencing factors and imposed an excessive sentence. While defendant did not raise exactly the same arguments he raises on appeal, he did argue the trial court erred in sentencing and it was able to reconsider the imposition of its sentence.

¶ 24 Defendant's arguments the trial court abused its discretion in imposing sentence are unpersuasive. A sentence which falls within the statutory guidelines is not an abuse of discretion unless it is manifestly disproportionate to the offense and cannot be justified by any reasonable review of the record. *People v. Mays*, 2012 IL App (4th) 090840, ¶ 66, 980 N.E.2d

166 (quoting *People v. Jackson*, 375 Ill. App. 3d 796, 800, 874 N.E.2d 592, 595 (2007)); *People v. Phippen*, 324 Ill. App. 3d 649, 651-52, 756 N.E.2d 474, 477 (2001). "A reviewing court must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a 'cold' record." *People v. Little*, 2011 IL App (4th) 090787, ¶ 24, 957 N.E.2d 102.

¶ 25 Defendant contends "the legislature has made a determination that the least onerous sentence possible given the facts and circumstance[s] of each individual defendant is the preference." Despite defendant's suggestion, a trial court can impose the maximum sentence possible under the statutory range. *Phippen*, 324 Ill. App. 3d at 652, 756 N.E.2d at 477 (existence of mitigating factors does not require sentencing court to reduce a sentence from the maximum allowed). It is well established the legislature has decided the appropriate sentence for a particular class offense, and the trial court has discretion to sentence a defendant within the applicable sentencing range. See *People v. Guevara*, 216 Ill. 2d 533, 543, 837 N.E.2d 901, 907 (2005) ("The legislature has broad authority to set criminal penalties, and courts may not interfere with the legislature's decisions in this area unless the challenged penalty is clearly in excess of the general constitutional limitations on this authority."). The legislature has determined a Class X felony is punishable by 6 to 30 years' imprisonment (730 ILCS 5/5-8-1(a)(3) (West 2008)) and a Class 1 felony is punishable by 4 to 15 years' imprisonment (730 ILCS 5/5-8-1(a)(4) (West 2008)). Here, the trial court sentenced defendant to a prison sentence within the applicable sentencing range on all four counts.

¶ 26 Defendant is unable to locate case law on point but asserts the court's "habit of placing a defendant halfway up the sentence range before hearing any evidence at all is the functional equivalent of using a wrong minimum sentence to fashion the imposed term." We disagree with defendant's contention. Starting in the middle of the applicable sentencing range is not tantamount to using the wrong sentencing range; one uses the correct range and the other does not.

¶ 27 Defendant posits the trial court's statement he "did not accept responsibility" for his actions amounts to the court punishing defendant for refusing to plead guilty and invoking his right to trial. The court's comments, taken in context, are a response to defense counsel's comments about defendant's decision to pursue a trial despite overwhelming evidence of guilt. The court expressly stated it was not going to punish defendant for going to trial but it would consider his refusal to accept responsibility in determining the sentence. " 'A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.' " *People v. Harris*, 359 Ill. App. 3d 931, 934, 835 N.E.2d 902, 904 (2005) (quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)). Here, the trial court candidly admitted sentencing is not an exact science but proceeded to set forth its consideration of defendant's mental state, criminal history, inability to be a contributing member of society, and his character in refusing to accept responsibility for his actions. The court based its sentence on the particular circumstances of this case and did not abuse its discretion.

¶ 28 While not addressed by the parties, we note the sentencing judgment states

defendant's sentence in this case is consecutive to his sentence in Sangamon County case No. 08-CF-1129. Pursuant to statute, his convictions in No. 08-CF-1129 are to be served consecutively to his sentence in this case. See 730 ILCS 5/5-8-4(d)(8), (8.5) (West 2012). We direct the trial court to amend the sentencing judgment accordingly.

¶ 29 B. Defendant's Assessments Claim

¶ 30 Defendant requests we order the circuit clerk to apply his statutory credit toward his assessments and reduce his Violent Crime Victims Assistance (VCVA) fine from \$20 to \$4. Whether fines are properly imposed raises a question of statutory interpretation and is reviewed *de novo*. *People v. Adair*, 406 Ill. App. 3d 133, 142-43, 940 N.E.2d 292, 301 (2010). On examination of the record, we find several errors.

¶ 31 1. *Defendant's Credits*

¶ 32 Under section 5-4.5-100 of the Unified Code of Corrections (730 ILCS 5/5-4.5-100 (West 2012)), an offender is entitled to sentencing credit "for the number of days spent in custody as a result of the offense for which the sentence was imposed." This means the offender is entitled to sentencing credit from the date of arrest to the date before sentencing. *People v. Roberson*, 212 Ill. 2d 430, 439, 819 N.E.2d 761, 766 (2004) ("once a defendant is arrested for an offense he or she is clearly 'in custody' for that offense"); *People v. Williams*, 239 Ill. 2d 503, 509, 942 N.E.2d 1257, 1261 (2011) (date of sentencing is counted as day of sentencing and not as presentence custody).

¶ 33 Pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2012)), defendant is entitled to a statutory \$5-per-day credit for time spent in presentence custody toward certain creditable fines. See *People v. Vlahon*, 2012 IL App (4th)

110229, ¶ 33, 977 N.E.2d 327 ("Such credit may only be applied to offset eligible fines, not fees."). The State concedes defendant is entitled to his statutory *per diem* credit.

¶ 34 Here, the record shows defendant was arrested in the instant case on March 18, 2008, and remained in custody without posting bond. On November 3, 2008, he was arrested in Sangamon County case No. 08-CF-1129 (he was in the sheriff's custody and at a hearing in the instant case when he ran out of the courtroom). On February 15, 2012, the court held a sentencing hearing in Sangamon County case No. 08-CF-1129, the State requested defendant remain in the county jail until this case was resolved, and the court reserved issuing a sentencing judgment. Then, on April 11, 2012, when he was sentenced in this case, the trial court found defendant was entitled to receive 1,257 days' credit for time spent in custody in this case and Sangamon County case No. 08-CF-1129. However, there are 1,485 days from March 18, 2008, the date of his arrest herein, up to April 11, 2012, the date of his sentencing (broken down into 230 days from March 18, 2008, up to November 3, 2008, and 1,255 days from November 3, 2008, up to April 11, 2012). It is apparent the trial court used November 3, 2008, the date of his arrest in Sangamon County case No. 08-CF-1129, the escape case, as his initial date of custody (the court also counted the date of sentencing, and apparently added another day to reach 1,257 days). Although defendant makes no argument, as a matter of law, defendant is entitled to additional credit from March 18, 2008, to November 3, 2008. See *People v. Cook*, 392 Ill. App. 3d 147, 149, 910 N.E.2d 208, 209 (2009) ("statutory right to sentence credit is mandatory"). We direct the trial court to accord defendant a total of 1,485 days' credit in this case.

¶ 35 In *People v. Schaeffer*, 2013 IL App (4th) 120145-U, ¶ 41, this court clarified defendant is not entitled to double presentencing credit for time spent in simultaneous custody in

this case and Sangamon County case No. 08-CF-1129 because his sentence in No. 08-CF-1129 is consecutive to this case and concluded he was also not entitled to receive *per diem* credit in both cases. See *People v. Latona*, 184 Ill. 2d 260, 271, 703 N.E.2d 901, 907 (1998) ("to the extent that an offender sentenced to consecutive sentences had been incarcerated prior thereto on more than one offense simultaneously, he should be given credit only once for actual days served"). He is entitled to his \$5 *per diem* credit against creditable fines in this case, or a total of \$7,425 *per diem* credit (1,485 x \$5 = \$7,425).

¶ 36 *2. Defendant's Assessments*

¶ 37 Defendant asserts he was erroneously assessed the following: (1) a \$5 "Drug Court" assessment; (2) a \$5 "Child Advocacy" assessment; (3) a \$15 "ISP Op Assistance" assessment; and (4) a \$20 VCVA fine. Defendant acknowledges the "State Police Ops" fine was not in effect at the time defendant committed this offense (see Pub. Act 96-1029, § 6 (eff. July 13, 2010)) and these assessments were improperly assessed by the circuit clerk. Defendant does not request this court to vacate these void fines and remand for reimposition of mandatory fines; rather, he requests this court order the circuit clerk to apply his statutory credit to these fines. The State concedes.

¶ 38 We reject the parties' concessions. This court has consistently held the circuit clerk does not have the power to impose fines. *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003); *People v. Shaw*, 386 Ill. App. 3d 704, 711, 898 N.E.2d 755, 762 (2008); *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20, 960 N.E.2d 612 ("any fines imposed by the circuit clerk's office are void from their inception"); *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 8, 979 N.E.2d 1023; *People v. Williams*, 2013 IL App (4th) 120313, ¶ 16, 991

N.E.2d 914 (observing "such actions by the clerks flagrantly run contrary to the law"). See also *People v. Gutierrez*, 2012 IL 111590, ¶ 24, 962 N.E.2d 437 (circuit clerk does not have authority to impose a public defender fee). We vacate the circuit clerk's imposition of these fines and remand to the trial court for reimposition of the mandatory fines. See *People v. Jake*, 2011 IL App (4th) 090779, ¶ 29, 960 N.E.2d 45; 55 ILCS 5/5-1101(d-5) (West 2008) (drug court assessment is mandatory and a fine); *People v. Folks*, 406 Ill. App. 3d 300, 305, 943 N.E.2d 1128, 1132 (2010); 55 ILCS 5/5-1101(f-5) (West 2008) (where authorized by county ordinance, the child-advocacy-center assessment is mandatory and a fine); 725 ILCS 240/10(b) (West 2008) (VCVA fine is \$4 for each \$40 or fraction thereof of fine imposed). We also expressly reject defendant's concession not to vacate the \$15 "State Police Ops" fine. This fine was not effective at the time of the offense.

¶ 39 Accordingly, we vacate the fines imposed by the circuit clerk. We remand with directions for the trial court to (1) reimpose the mandatory fines as required (this includes only those fines authorized at the time of the offense); (2) accord defendant presentencing credit for the period from March 18, 2008, to April 11, 2012, or a total of 1,485 days; and (3) direct the circuit clerk to apply defendant's statutory credit against creditable fines.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm in part, vacate in part, and remand with directions. We vacate the fines imposed by the circuit clerk. We remand with directions for the trial court to (1) amend the judgment to reflect his sentence in No. 08-CF-1129 is consecutive to the sentence in this case; (2) reimpose the mandatory fines as required (this includes only those fines authorized at the time of the offense); (3) accord defendant presentencing credit for the

period from March 18, 2008, to April 11, 2012, or a total of 1,485 days; and (4) direct the circuit clerk to apply defendant's statutory credit against creditable fines. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 42            Affirmed in part, vacated in part, and cause remanded with directions.