



¶ 5 On February 1, 2008, defendant, a resident at the Illinois Department of Human Services Treatment and Detention Facility in Rushville, obstructed an observation window to his room. A facility security aide (an employee of the Department of Human Services) investigated the obstruction and, when defendant's room door opened, defendant struck the aide in the face and upper body, causing injury. Defendant was then taken into custody, held pursuant to a mandatory supervised release (MSR) violation, and transported to a Department of Corrections (Department) facility. On February 7, 2008, the State charged defendant with aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)). On March 12, 2008, defendant made his first appearance before the trial court and was informed of the charges. At the hearing, the State's Attorney informed the court no formal arrest had been made in this case and he was being held pursuant to the MSR violation. On October 9, 2008, defendant entered a partially negotiated plea whereby the State agreed to seek no more than 10 years' imprisonment.

¶ 6 On November 21, 2008, the trial court held a sentencing hearing. The State introduced a presentencing investigation report (PSI) and certified convictions from three previous criminal convictions. Defendant was convicted in (1) Cook County case No. 82-C-11415 of armed violence (five counts), deviate sexual assault, armed robbery, and aggravated kidnapping (three counts); (2) Cook County case No. 82-C-11416 of rape, armed robbery, and aggravated kidnapping; and (3) Livingston County case No. 90-CF-173 of unlawful possession of a weapon by a person in the custody of a Department facility. The trial court found defendant was eligible for Class X sentencing and sentenced defendant to 10 years' imprisonment. In its written order, the court (1) found defendant was entitled to presentence credit from March 12, 2008, to November 21, 2008, and (2) ordered defendant to "pay all court costs."

¶ 7 In November 2008, defendant filed a *pro se* motion to withdraw guilty plea. In December 2008, defendant, by counsel, filed an amended motion to withdraw guilt plea. On April 30, 2012, the trial court denied the motion.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues he is entitled to (1) presentencing credit from February 1, 2008, to November 20, 2008, or a total of 294 days' credit; and (2) \$5 *per diem* statutory credit against creditable fines.

¶ 11 All the issues raised on appeal involve questions of statutory interpretation and are reviewed *de novo*. *People v. Caballero*, 228 Ill. 2d 79, 82 (2008); *People v. Sulton*, 395 Ill. App. 3d 186, 189 (2009).

¶ 12 A. Defendant's Sentencing Credit Claim

¶ 13 Defendant asserts he is entitled to presentencing credit against his prison sentence pursuant to section 5-8-7(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-7(b) (West 2008)). He contends this case is "practically identical" to *People v. White*, 357 Ill. App. 3d 1070 (2005). In *White*, the Third District concluded that the defendant was entitled to sentencing credit from the date of arrest even though the defendant was simultaneously in the Department's physical custody for a violation of his mandatory supervised release (MSR). *Id.* at 1075. We note, while not at issue in the *White* appeal, the defendant's sentence in *White* was ordered to run concurrent to the sentence in which the MSR violation occurred. *Id.* at 1071.

¶ 14 The State (1) responds defendant is not entitled to sentence credit, pursuant to *People v. Latona*, 184 Ill. 2d 260 (1998), because his sentence, pursuant to section 5-8-4(f) of the Unified

Code (730 ILCS 5/5-8-4(f) (West 2008)), is mandatorily consecutive to the sentences in the Cook County and Livingston County cases; and (2) requests we amend the sentencing judgment to reflect his sentence is consecutive to the sentences imposed in Cook County case Nos. 82-CF-11415 and 82-CF-11416 and Livingston County case No. 90-CF-173.

¶ 15           The State's argument is unpersuasive. The trial court did not order defendant's sentence to run consecutively to the sentences imposed in the Cook County and Livingston County cases. Accordingly, to accept the State's argument we must also conclude the trial court erred by not imposing a consecutive sentence. Section 5-8-4(f) of the Unified Code, in relevant part, states: "A sentence of an offender committed to the Department of Corrections at the time of the commission of the offense shall be served consecutive to the sentence under which he is held by the Department of Corrections." 730 ILCS 5/5-8-4(f) (West 2008) (text of section effective until July 1, 2009). We note this section has been amended to begin "If the defendant was in the custody of the Department \*\*\*." 730 ILCS 5/5-8-4(d)(6) (West 2008) (text of section effective after July 1, 2009). In *People ex rel. Gibson v. Cannon*, 65 Ill. 2d 366, 368 (1976), the case defendant relies on in response to the State's argument, our supreme court considered whether section 5-8-4(f) of the Unified Code, as it was written in 1973, mandated consecutive sentencing when the defendant received a sentence based on an offense committed while on parole. At the time, section 5-8-4(f) stated, " 'A sentence of an offender committed to the Department of Corrections at the time of the commission of the offense shall not commence until expiration of the sentence under which he is held by the Department of Corrections.' " *Id.* at 369 (quoting Ill. Rev. Stat. 1973, ch. 38, ¶ 1005-8-4(f)). The supreme court stated the statute's use of the word "held" connoted a state of physical restraint, which "is seemingly inconsistent with the parolee's status as a person released from confinement." *Id.* at 370. It

concluded section 5-8-4(f) did not apply "to those who are on parole at the time of the commission of a subsequent offense." *Id.* at 371. This court has interpreted *Gibson* to hold section 5-8-4(f) does "not require a parolee's sentence for an offense committed while on parole to run consecutive to the sentence underlying the parole." *People v. Davey*, 154 Ill. App. 3d 167, 169 (1987). See also *People v. Chatman*, 49 Ill. App. 3d 1034, 1037 (1977); *People v. Washington*, 297 Ill. App. 3d 790, 796 (1998).

¶ 16 Here, at the time of the offense, defendant was a resident in a Department of Health Services facility and was on MSR for his previous convictions. Then, he was taken into the Department's physical custody for violating MSR because of the conduct leading to the charges in the instant case. The State argues defendant "was still under the commitment of the Illinois Department of Corrections" because he was under the Department's legal custody and not discharged from MSR. The State's argument relies on the defined term "commitment," which the Unified Code defines as "a judicially determined placement in the custody of the Department of Corrections on the basis of delinquency or conviction" (730 ILCS 5/3-1-2(b) (West 2008)). However, section 5-8-4(f) of the Unified Code uses "committed" not "commitment." "Committed" is defined as "to put into charge or trust: ENTRUST" and "to place in a prison or mental institution." Merriam-Webster's Collegiate Dictionary 231 (10th ed. 2000). Moreover, when the supreme court considered whether section 5-8-4(f) mandated a consecutive sentence in *Gibson*, section 5-8-4(f) used the same "committed" language and the court did not conclude "committed" meant "commitment." To accept the State's interpretation of section 5-8-4(f) we would have to conclude the statute uses a word it does not use and *Gibson* is no longer good law. The State has provided no basis to conclude *Gibson* is no longer good law. We continue to follow *Gibson*, as we must, and conclude section 5-8-4(f)

does not require a consecutive sentence. Accordingly, defendant's sentences are not consecutive and the *Latona* restriction on presentencing credit does not apply.

¶ 17 A defendant is entitled to sentencing credit for each day spent in custody as a result of the offense for which the sentence was imposed. 730 ILCS 5/5-8-7(b) (West 2008). Generally, where the defendant does not post bond, this means the defendant is entitled to presentence credit for those days in custody from the date of the arrest up to the date before sentencing. See *People v. Roberson*, 212 Ill. 2d 430, 439 (2004) (date of arrest); *People v. Williams*, 239 Ill. 2d 503, 509 (2011) (date of sentencing not counted as a day of presentence custody); *People v. Newman*, 211 Ill. App. 3d 1087, 1099 (1991) (awarding sentencing credit for month the defendant spent concurrently in the Department for a parole violation). We note the legislature has repealed section 5-8-7 (Pub. Act 95-1052, § 95 (eff. July 1, 2009)), and under the new section 5-4.5-100 of the Unified Code (730 ILCS 5/5-4.5-100 (West 2010) (eff. July 1, 2009)), presentencing credit is denied where the offender committed an offense while on MSR and then spent time in custody as a result of the MSR revocation.

¶ 18 Here, defendant, even though there may have been no formal arrest, was in custody as a result of this offense on February 1, 2008, and sentenced on November 21, 2008. It is obvious the trial court mistakenly used March 12, 2008, as the custody start date. Pursuant to section 5-8-7(b) of the Unified Code, defendant is entitled to credit from February 1, 2008, to November 20, 2008, the day before sentencing, or a total of 294 days.

¶ 19 We note our review of the Department's website reflects his prior sentences have not been discharged, presumably because of the MSR violation for committing the offense in the instant case. The record does not reflect the amount of prison time remaining on defendant's previous

sentences. We note it is the Department's responsibility to properly (1) allocate the credit defendant is entitled to in the instant case; (2) ensure he receives all the credit to which, and no more than, he is statutorily entitled; (3) calculate the term of defendant's imprisonment for the instant offense; and (4) determine when all defendant's prison terms have been completed. See 730 ILCS 5/3-3-2.1 (West 2008) (release date); 730 ILCS 5/3-6-3 (West 2008) (rules for early release); 730 ILCS 5/5-8-7 (West 2008) (calculation of term of imprisonment). In other words, while defendant is entitled to additional credit in the instant case, this does not mean he will actually be released from prison any sooner.

¶ 20 B. Defendant's Assessments Claim

¶ 21 Defendant requests credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2008)) against his creditable fines. Defendant contends "the trial court imposed fines and fees totaling \$190" and "[a]mong the charges assessed by the court was a \$5 'Child Advocacy Fee.'" Our review of defendant's assessments reveals error.

¶ 22 In its written order, the trial court ordered defendant to pay "all court costs." The record does not contain any other order by the court imposing fines or fees. The circuit clerk's printout states defendant is required to pay, *inter alia*, the following assessments: (1) \$25 "Violent Crime"; (2) \$10 "Medical Cost"; and (3) \$5 "Child Advocacy Fee." First, pursuant to section 10(c)(1) of the Violent Crimes Victims Assistance (VCVA) Act, a \$25 VCVA fine is improper where another fine is imposed. 725 ILCS 240/10(c)(1) (West 2008); 725 ILCS 240/10(b) (West 2008) (VCVA fine is \$4 for each \$40 or fraction thereof of fine imposed). More important, 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 (2003); *People v. Shaw*, 386 Ill. App. 3d 704, 711 (2008);

*People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20 ("any fines imposed by the circuit clerk's office are void from their inception"); *People v. Williams*, 2013 IL App (4th) 120313, ¶ 16 ("such actions by the clerks flagrantly run contrary to the law"). Since the three assessments were not imposed by the trial court, they were improperly imposed by the circuit clerk and we vacate them. We remand with directions for the trial court to impose the mandatory fines as required at the time of the offense, February 1, 2008. This includes but may not be limited to (1) the violent-crimes-victims-assistance-fund fine (725 ILCS 240/10 (West 2008)); (2) the \$5 child-advocacy-center fine (*People v. Folks*, 406 Ill. App. 3d 300, 305 (2010); 55 ILCS 5/5-1101(f-5) (West 2008)); (3) the \$10 medical-cost-fund fee (730 ILCS 125/17 (West 2008)); and (4) the lump-sum surcharge (730 ILCS 5/5-9-1(a), (c) (West 2008)). Further, we encourage the trial court to review the reference sheet this court recently provided in *Williams*, 2013 IL App (4th) 120313, to assist circuit courts in ensuring the statutory fines and fees in criminal cases are properly imposed.

¶ 23 Defendant is entitled to a statutory \$5 *per diem* credit for time spent in presentence custody toward creditable fines. 725 ILCS 5/110-14(a) (West 2008). As discussed above, defendant is entitled to 294 days' credit, or \$1,470 ( $\$5 \times 294 = \$1,470$ ) of available *per diem* credit. On remand, the trial court is directed to direct the circuit clerk to apply the available credit against creditable assessments.

¶ 24 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) and (2) direct the circuit clerk to apply defendant's available statutory credit to the imposed fines.

¶ 25

### III. CONCLUSION

¶ 26 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) accord defendant presentencing credit for the period from February 1, 2008, to November 20, 2008, the day before sentencing, or 294 days; (2) reimpose the mandatory fines as required (this includes only those fines authorized at the time of the offense); and (3) direct the circuit clerk to apply defendant's available statutory credit to the imposed fines.

¶ 27 Affirmed in part, vacated in part, and remanded with directions.