

**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).

2014 IL App (3d) 120871-U

Order filed February 25, 2014

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 21st Judicial Circuit,
	)	Iroquois County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0871
v.	)	Circuit No. 11-CF-103
	)	
GEORGE F. ELPERS, JR.,	)	Honorable
	)	Gordon L. Lustfeldt,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE CARTER delivered the judgment of the court.  
Justice O'Brien concurred in the judgment.  
Justice Wright dissented.

---

**ORDER**

¶ 1 *Held:* (1) Defendant's Violent Crime Victims Assistance Fund assessment is reduced to \$20. (2) Defendant's youth diversion fee, State Police operations fee, and probation operations fee are offset by his \$30 presentence incarceration credit.

¶ 2 Defendant, George F. Elpers, Jr., was convicted of theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)) and was sentenced to three years and six months of imprisonment. On appeal, defendant argues that: (1) the trial court's imposition of a \$100 Violent Crime Victims Assistance (VCVA) Fund assessment violated *ex post facto* principles; and (2) he is entitled to a \$5-per-day credit

against his youth diversion fee, State Police operations fee, and probation operations fee. We modify defendant's VCVA assessment, offset defendant's fines by his presentence incarceration credit, and remand the cause for an appropriate refund.

¶ 3

### FACTS

¶ 4 Defendant was charged by indictment with residential burglary (720 ILCS 5/19-3 (West 2010)) and theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)). The indictment alleged that the charged offenses were committed on August 19, 2011.

¶ 5 After a bench trial, the court found defendant not guilty of residential burglary and guilty of theft. The court sentenced defendant to a term of three years and six months of imprisonment and entered a judgment for costs. The court also awarded defendant presentence incarceration credit from September 22 to September 27, 2011. The payment status information sheet stated that the judgment included a \$100 VCVA assessment, \$5 youth diversion fee, \$15 State Police operations fee, and a \$10 probation operations fee. A receipt from the Iroquois County circuit clerk's office dated August 22, 2012, stated that defendant did not have a balance owing.

Defendant appeals.

¶ 6

### ANALYSIS

¶ 7

#### I. VCVA Fund Assessment

¶ 8 Defendant argues that that his \$100 VCVA assessment violates *ex post facto* principles because the statute in effect at the time of the offense authorized a VCVA assessment of \$20.

We review this issue *de novo*. *People v. Davis*, 408 Ill. App. 3d 747 (2011).

¶ 9 At the time of the instant offense, section 10(c)(2) of the VCVA Act imposed a penalty of \$20 following any felony conviction not defined as a crime of violence in section 2(c) of the Crime Victims Compensation Act, when no other fine was imposed. 725 ILCS 240/10(c)(2) (West 2010); see also 740 ILCS 45/2(c) (West 2010)). Effective July 16, 2012, Public Act 97-

816 increased the VCVA assessment to \$100 for any felony conviction. See 725 ILCS 240/10 (West 2012). The VCVA assessment is considered a fine because it is pecuniary in nature and does not compensate the State for costs incurred in prosecuting a defendant. *People v. Tolliver*, 363 Ill. App. 3d 94 (2006). The imposition of a fine that takes effect after defendant committed an offense violates *ex post facto* principles. *People v. Carreon*, 2011 IL App (2d) 100391.

¶ 10 In the instant case, defendant was convicted of theft, a Class 3 Felony (720 ILCS 5/16-1(b)(4) (West 2010)) and, therefore, was subject to the VCVA assessment. 725 ILCS 240/10(c)(2) (West 2010). However, the trial court erroneously imposed a \$100 VCVA assessment under the 2012 amendment because defendant's offense occurred in August 2011, before the effective date of the amendment. See 725 ILCS 240/10(b)(1) (West 2012).

Therefore, defendant's VCVA assessment is modified to \$20. We further note that a receipt in the record indicates that defendant previously paid the \$100 assessment. Consequently, we remand the cause for the issuance of an \$80 refund. See *People v. Molidor*, 2012 IL App (2d) 110006.

¶ 11 II. \$5-per-day Credit

¶ 12 Defendant argues that he is entitled to apply his presentence incarceration credit against his youth diversion fee, State Police operations fee, and probation operations fee. The State concedes that defendant is entitled to credit against any qualifying fines. Specifically, the State agrees defendant is entitled to credit against his youth diversion fee and State Police operations fee, but takes no position on whether defendant's probation operations fee is subject to the credit.

¶ 13 Section 110-14 of the Code of Criminal Procedure of 1963 allows a "person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense \*\*\* a credit of \$5 for each day so incarcerated." 725 ILCS 5/110-14(a) (West 2010). The credit is applicable only to a defendant's fines. *Tolliver*, 363 Ill. App. 3d 94.

¶ 14 We agree with the State's concession that defendant's presentence incarceration credit should be applied to satisfy his fines. Despite its nominal classification as a fee, the \$5 youth diversion fee is functionally a fine because of its punitive nature. *People v. Price*, 375 Ill. App. 3d 684 (2007). Similarly, the \$15 State Police operations fee is also a fine. *People v. Millsap*, 2012 IL App (4th) 110668. Finally, the \$10 probation operations fee is cognizable as a fine because it too does not compensate the State for its costs of prosecuting defendant. *People v. Dalton*, 406 Ill. App. 3d 158 (2010). Therefore, defendant is entitled to apply his presentence incarceration credit to satisfy each of those charges.

¶ 15 Defendant spent six days in presentence custody and is entitled to a credit of \$30. As previously noted, a receipt in the record states that defendant has paid all of his fines. Therefore, we remand the cause to the trial court for the issuance of a \$30 refund. See *Molidor*, 2012 IL App (2d) 110006.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Iroquois County is affirmed as modified, and the cause is remanded.

¶ 18 Affirmed as modified; cause remanded.

¶ 19 Justice Wright, dissenting.

¶ 20 Defendant did not challenge his sentence in the trial court and now contends, for the first time on appeal, that the \$100 VCV fine is void based on *ex post facto* principles. The State contends the \$100 fine was mandated by the statute in effect at the time of his conviction and, thus, is not void.

¶ 21 It is well-established that the clerk of a court, as a nonjudicial member of the court, has no power to impose sentences or levy fines and, instead, only has authority to collect judicially imposed fines. *People v. Williams*, 2013 IL App (4th) 120313, ¶ 16. The difficulty in this case

is that the trial judge did not order the imposition of any fine in the case at bar. The written judgment order is silent as to fines and costs. During the sentencing hearing, the court announced, “Judgment entered for costs.” Thus, the fines, which the State concedes should be subject to a \$5-*per-diem* credit, were not imposed by the court but, rather, assessed by a well-intentioned circuit clerk.

¶ 22 Therefore, I would remand the matter to the trial court with directions to enter a *complete* written judgment order identifying the amount and nature of each monetary charge ordered by the court as part of defendant’s sentence. I would also instruct the trial court on remand to direct the clerk to apply \$5-*per-diem* credit towards any fines, as well as statutory fees that operate as fines, ordered by the court.