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2015 IL App (3d) 130166-U

Order filed February 26, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0166
	)	Circuit No. 09-CF-2189
ANTHONY HOWELL,	)	Honorable
Defendant-Appellant.	)	Daniel J. Rozak, Judge, Presiding.

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PRESIDING JUSTICE McDADE delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) The restitution order must be vacated because it related to a charge that was dismissed by the State; and (2) defendant's fines and fees must be modified because the court systems fee was actually a fine.

¶ 2 Defendant, Anthony Howell, appeals from his convictions and sentences for six counts of residential burglary (720 ILCS 5/19-3 (West 2008)). Defendant argues that his restitution order must be vacated and his fines and fees modified. We vacate the restitution order, modify defendant's fines and fees, and otherwise affirm the judgment.

¶ 3

## FACTS

¶ 4

Defendant was charged with six counts of residential burglary (720 ILCS 5/19-3 (West 2008)) and two counts of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2008)). He pled guilty to the six counts of residential burglary, and the State dismissed both counts of resisting a peace officer. The court sentenced defendant to 12½ years' incarceration on each of the six counts, to be served concurrently. The court imposed \$1,631.91 in restitution for injuries suffered by the officers in relation to the two counts of resisting a police officer. In addition, the court imposed various fines and fees. Defendant appeals.

¶ 5

## ANALYSIS

¶ 6

### I. Restitution

¶ 7

Defendant argues that the restitution order must be vacated because the officers' injuries resulted from the resisting a peace officer charges, which were dismissed.

¶ 8

The State concedes that the restitution order of \$1,631.91 must be vacated. Section 5-5-6 of the Unified Code of Corrections authorizes restitution for damages "as a result of the criminal act of the defendant." 730 ILCS 5/5-5-6 (West 2008). Here, the restitution was for damages suffered by officers as a result of the resisting a peace officer charges. However, the State dismissed those charges as part of defendant's plea agreement. Restitution cannot be ordered for dismissed charges unless the defendant agrees to such an arrangement in the plea agreement. *People v. Felton*, 385 Ill. App. 3d 802, 805-06 (2008). Here, the plea agreement contained no such agreement. The \$1,631.91 restitution order is therefore vacated.

¶ 9

### II. Fines and Fees

¶ 10

Defendant argues that the trial court improperly calculated certain of his fines and fees.

¶ 11 Section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2008)) grants a defendant a \$5 credit for each day spent in presentence custody, which may be applied toward the defendant's fines. Here, the court imposed a \$50 court systems fee under section 5-1101 of the Counties Code (55 ILCS 5/5-1101 (West 2008)). The court did not apply defendant's \$5-per-day credit toward that assessment. The court systems fee is actually a fine. *People v. Graves*, 235 Ill. 2d 244, 253 (2009). Therefore, defendant's credit should have been applied toward it. Defendant has sufficient \$5-per-day credit to fully satisfy the \$50 court systems fee. We order the circuit clerk to apply defendant's \$5-per-day credit to satisfy the \$50 court systems fee.

¶ 12 Because the court systems fee is actually a fine, defendant's Violent Crime Victims Assistance Fund (VCVAF) assessment was improperly calculated. 725 ILCS 240/10 (West 2008). The statute authorizes a \$20 VCVAF assessment if no fines were imposed against the defendant. *Id.* If, on the other hand, fines were imposed against defendant, the statute authorizes a \$4 VCVAF assessment for every \$40 of fines imposed. *Id.* Here, the \$50 court systems fee constituted a fine. Therefore, the statute authorized an \$8 VCVAF assessment. *Id.* We order the circuit clerk to reduce defendant's VCVAF assessment from \$20 to \$8.

¶ 13 In sum, we order the circuit clerk to vacate the \$1,631.91 restitution order, apply \$50 in credit toward the court systems fee, and reduce the VCVAF assessment from \$20 to \$8.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Will County is affirmed as modified.

¶ 16 Affirmed as modified.