

NOTICE

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FILED

September 2, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 140287-U
NOS. 4-14-0287, 4-14-0288 cons.

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Cumberland County
NORMAN J. STANTON,)	Nos. 12CF25
Defendant-Appellant.)	12CF74
)	
)	Honorable
)	Millard Scott Everhart,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* On appeal after revocation of probation and resentencing, the appellate court awarded defendant sentence credit and monetary credit, declined to address the probation costs awarded or DNA analysis charge in an earlier judgment not timely appealed, and remanded with directions.

¶ 2 The State charged defendant, Norman J. Stanton, with two counts of unlawful restraint (counts I and II) (720 ILCS 5/10-3(a) (West 2010)) and one count of domestic battery (count III) (720 ILCS 5/12-3.2(a)(2) (West 2010)) in Cumberland County case No. 12-CF-25. Defendant was released on bail. While on bail, the State charged defendant with home invasion (count I) (720 ILCS 5/12-11(a)(2) (West 2010)) and aggravated domestic battery (count II) (720 ILCS 5/12-3.3 (West 2010)) in Cumberland County case No. 12-CF-74. Defendant pleaded guilty to count II in case No. 12-CF-74 in exchange for the dismissal of count I and a term of 48 months' probation, with conditions including 120 days in jail. Defendant additionally pleaded

guilty to count I in case No. 12-CF-25 in exchange for a term of 30 months' probation, with conditions including 21 days in jail, served concurrently with case No. 12-CF-74.

¶ 3 In June 2013, the State filed petitions to revoke defendant's probation in case Nos. 12-CF-25 and 12-CF-74, alleging he violated probation by committing the offenses of obstructing justice, operation of an uninsured vehicle, and driving while his license was revoked. In September 2013, the State filed supplemental petitions to revoke his probation in case Nos. 12-CF-25 and 12-CF-74, alleging defendant violated his probation by committing the offense of domestic battery and disorderly conduct.

¶ 4 In April 2014, defendant admitted the allegations in the supplemental petitions and the trial court resentenced defendant to four years' imprisonment with four years' mandatory supervised release (MSR) in case No. 12-CF-74 and a concurrent term of two years in prison and one year of MSR for case No. 12-CF-25, to run consecutively with the six-year extended-term sentence for domestic battery, enhanced, in Cumberland County case No. 13-CF-54, with credit for 228 days served. Defendant appeals, and we consolidated the appeals (Nos. 4-14-0288 and 4-14-0287, respectively).

¶ 5 I. BACKGROUND

¶ 6 In May 2012, the State charged defendant in case No. 12-CF-25 with two counts of unlawful restraint (counts I and II) (720 ILCS 5/10-3(a) (West 2010)) and one count of domestic battery (count III) (720 ILCS 5/12-3.2(a)(2) (West 2010)) based on his conduct on May 4, 2012. Defendant was released on bail. In November 2012, while on bail, the State charged defendant by information in case No. 12-CF-74 with home invasion (count I) (720 ILCS 5/12-11(a)(2) (West 2010)) and aggravated domestic battery (count II) (720 ILCS 5/12-3.3 (West 2010)) based on his conduct on November 11, 2012. On December 10, 2012, the trial court

revoked defendant's bail in case No. 12-CF-25 without objection.

¶ 7 In January 2013, defendant pleaded guilty to count II in case No. 12-CF-74 in exchange for the dismissal of count I and a term of 48 months' probation and a "special term" of 120 days in jail. The trial court also required defendant to pay a \$210 domestic violence fine and a \$250 public defender fee. The court credited defendant for 77 days against the 120-day jail condition for time served, as well as a \$5-per-day credit against the public defender fee, but not the domestic violence fine. The State did not object. The circuit clerk's fines and fees information contained in the supplemental record exhibits show additional fines added not included in the court's judgment, including a state police operations fine (705 ILCS 105/27.3a(1.5) (West 2012)), a court system fee (55 ILCS 5/5-1101(c) (West 2012)), a lump sum surcharge (730 ILCS 5/5-9-1(c) (West 2012)), and an arrestee medical assessment fee (730 ILCS 125/17 (West 2012)); the court imposed a deoxyribonucleic acid (DNA) identification fee and a monthly probation fee (705 ILCS 105/27.3a(1.1) (West 2012)). The supplemental record shows defendant was previously charged a \$250 DNA identification fee in an earlier, unrelated Moultrie County case, No. 12-CF-50, although this was not discussed at sentencing. According to the presentence investigation report, case No. 12-CF-50 concluded eight days before case No. 12-CF-74 concluded. On March 13, 2013, the trial court, probation officer, and defendant signed the prosecution order imposing a \$25 monthly probation fee.

¶ 8 In January 2013, defendant pleaded guilty to count I in case No. 12-CF-25 in exchange for a term of 30 months' probation and 21 days in jail (credited for 19 days served), served concurrently with case No. 12-CF-74. Defendant was also ordered to pay a "\$250 fine" and a \$100 public defender fee. The circuit clerk's fines and fees information contained in the supplemental record exhibits shows additional fines added that were not included in the court's

judgment, including a state police operations fine (705 ILCS 105/27.3a(1.5) (West 2012)), a court system fee (55 ILCS 5/5-1101(c) (West 2012)), a lump sum surcharge (730 ILCS 5/5-9-1(c) (West 2012)), and an arrestee medical assessment fee (730 ILCS 125/17 (West 2012)). On March 13, 2013, the trial court, probation officer, and defendant signed the prosecution order imposing a \$25 monthly probation fee.

¶ 9 In June 2013, the State filed petitions to revoke defendant's probation in case Nos. 12-CF-25 and 12-CF-74, alleging he violated probation by committing the offenses of obstructing justice, operation of an uninsured vehicle, and driving while his license was revoked. In September 2013, the State filed a supplemental petition to revoke defendant's probation in those same cases, alleging he had violated probation by committing the offenses of domestic battery and disorderly conduct as outlined in Cumberland County case No. 13-CF-54 (counts II and III).

¶ 10 In April 2014, defendant admitted the allegations of the amended September 2013 supplemental petitions. The trial court resentenced defendant based on the underlying offenses of unlawful restraint (case No. 12-CF-74) and aggravated domestic battery (case No. 12-CF-25). The court resentenced defendant to concurrent terms of four years' imprisonment followed by four years' MSR in case No. 12-CF-74 and two years in prison, followed by one year of MSR in case No. 12-CF-25. Defendant was also sentenced to 6- and 5-year concurrent terms with credit for 228 days served in case No. 13-CF-54, which is not the subject of this appeal. The State did not object to the court's decision to sentence defendant to concurrent sentences in case Nos. 12-CF-25 and 12-CF-74. This appeal followed.

¶ 11 Defendant provides documentation from the Cumberland County sheriff's office as to some dates spent in custody. Defendant alleged, in case No. 12-CF-25, he spent a total of

68 days in custody (May 4, 2012, to May 22, 2012, and December 10, 2012, to January 28, 2013). Defendant alleged, in case No. 12-CF-74, he spent a total of 122 days in custody (November 11, 2012, to January 28, 2013, to March 12, 2013). (According to the sheriff's records, defendant was also in custody in case No. 13-CF-54 from August 20, 2013, to April 7, 2014.)

¶ 12

II. ANALYSIS

¶ 13 Defendant, on appeal, argues the trial court erred when it (1) failed to award pretrial sentencing credit against his prison terms in case Nos. 12-CF-25 and 12-CF-74; (2) failed to award the \$5-per-day monetary credit for time in custody applied against creditable fines in case Nos. 12-CF-25 and 12-CF-74; (3) improperly assessed probation fees in case No. 12-CF-74 while defendant was in jail; and (4) improperly imposed the \$250 DNA fee when it had already been assessed in Moultrie County case No. 12-CF-50. The State disagrees, arguing (1) the trial court did not err because defendant is not entitled to "double credit for simultaneous custody *** because law mandated his concurrent prison terms to run consecutively"; (2) defendant already received the proper credit against all eligible fines; (3) this court lacks jurisdiction on appeal after revocation to review the order imposing probation fees; and (4) this court lacks jurisdiction to review the order imposing defendant pay a \$250 DNA fee.

¶ 14

A. Presentence Credit

¶ 15 Defendant argues the trial court erred when it failed to award him pretrial sentence credit against his concurrent terms in case Nos. 12-CF-25 and 12-CF-74. The State disagrees, arguing defendant was not entitled to concurrent sentences according to section 5-8-4 of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(8) (West 2012)). According to the State, defendant should not receive the benefit of simultaneous credit (68 days) based on the

court's alleged error. The Department of Corrections will accord a defendant credit in each case for the days served in that case. (This does not result in defendant receiving two days of credit, for example, for serving December 10, 2012, in two cases when the sentences run concurrently.)

We agree with defendant.

¶ 16 Defendant argues he is entitled to 122 days' presentence credit in case No. 12-CF-74 for time spent in presentence custody from November 11, 2012, to sentencing on January 28, 2013, to March 12, 2013, for his jail sentence. The State concedes this point.

¶ 17 Defendant argues he is entitled to 68 days for time served in case No. 12-CF25 from May 4, 2012, through May 22, 2012, and December 10, 2012, when his bail was revoked herein, through January 28, 2013, when he was sentenced. The State argues defendant is entitled only to the 19 days in May. The State disagrees with the award of simultaneous credit for the days spent in custody from December 10, 2012, to January 28, 2013.

¶ 18 "Whether a defendant should receive presentence custody credit against his sentence is reviewed under the *de novo* standard of review." *People v. Jones*, 2015 IL App (4th) 130711, ¶ 12, 44 N.E.3d 1112.

¶ 19 Defendant should have (1) been sentenced to consecutive sentences as he committed a felony while on bail (730 ILCS 5/5-8-4(d)(8) (West 2012)), and (2) "receive[d] but one credit for each day actually spent in custody as a result of the offense or offenses for which [he is] ultimately sentenced." *People v. Latona*, 184 Ill. 2d 260, 271, 703 N.E.2d 901, 907 (1998). Under the trial court's decision to impose concurrent sentences, defendant was entitled to "receive sentence credit on both offenses for each day he spent in simultaneous custody and additional credit against each sentence for time spent in custody on that offense only." *Latona*, 184 Ill. 2d at 270, 703 N.E.2d at 906 (citing *People v. Robinson*, 172 Ill. 2d 452, 454-56, 463,

667 N.E.2d 1305, 1306-07, 1310 (1996)).

¶ 20 The State nevertheless contends this court should not "compound defendant's windfall" and mentions "the State is permitted to seek relief from the Supreme Court of Illinois via a writ of *mandamus*." While we do not disagree with the State's procedural proposition, this court "may not *** address a request by the State to increase a criminal sentence which is illegally low." *People v. Castleberry*, 2015 IL 116916, ¶ 26, 43 N.E.3d 932.

¶ 21 In December 2012, defendant's bail was revoked in case No. 12-CF-25, entitling him to credit from December 10, 2012, to January 28, 2013 (49 days). Defendant was additionally not credited in case No. 12-CF-74 from November 11, 2012, to March 12, 2013 (122 days). We remand this case to the trial court with directions to amend the written sentencing judgments to reflect credit for these dates.

¶ 22 B. Five Dollars-Per-Day Monetary Credit

¶ 23 Defendant argues he is entitled to \$340 in monetary credit for 68 days served toward creditable fines in case No. 12-CF-25 and \$390 in monetary credit for credit for 78 days served before sentencing in case No. 12-CF-74. 725 ILCS 5/110-14(a) (West 2012). The State argues defendant has received monetary credit for the "19 days' [spent in pretrial] custody" from May 4, 2012, through May 22, 2012. The State argues defendant is not entitled to monetary credit in case No. 12-CF-25 for the days allegedly spent in simultaneous custody from December 10, 2012, through January 27, 2013, because he was not in simultaneous custody. The State concedes the record does not reflect defendant was credited in case No. 12-CF-74 for the state police operations fine, the court finance fine, and the domestic violence fine, and it requests this court to direct those fines satisfied by the available monetary credit.

¶ 24 "Because the construction of a statute is a question of law, our review is *de novo*."

Robinson, 172 Ill. 2d at 457, 667 N.E.2d at 1307.

¶ 25 Incarcerated defendants on bailable offenses are entitled to a \$5-per-day presentence credit up to the amount of any imposed fines (725 ILCS 5/110-14(a) (West 2012)). Defendant argues he should be credited with 68 days in custody for case No. 12-CF-25 (May 4, 2012, through May 22, 2012, and December 10, 2012, through January 28, 2013) and 78 days for case No. 12-CF-74 (November 11, 2012, through January 28, 2013). We are of the view that a criminal defendant is entitled to the \$5-per-day monetary credit in only one case for any given day in custody. Inasmuch as defendant received credits noted by the State, he is not entitled to additional monetary credit for the overlapping dates in case No. 12-CF-25. *Cf. People v. Wacker*, 257 Ill. App. 3d 728, 735, 629 N.E.2d 764, 769 (1994).

¶ 26 We remand with directions to modify the written sentencing judgments to reflect the above calculation of defendant's monetary sentence credit and apply the amounts to creditable fines, \$390 in case No. 12-CF-74 and \$95 in case No. 12-CF-25.

¶ 27 C. Probation Fees

¶ 28 Defendant was initially sentenced, on January 28, 2013, to 48 months' probation in case No. 12-CF-74. Defendant spent the first 44 days in jail and was later returned to custody on August 20, 2013. According to defendant, "[a]t most, [he] was only actively supervised by probation from March 12, 2013[,] until August 20, 2013." On appeal, defendant argues because he was not technically receiving the services of the probation department, the fee "turned into" a fine and he should only be charged \$125 for the five months in which he maintains he was technically on probation. The State argues (1) the circuit clerk's "listing of fees merely reflects exactly what the trial court had ordered defendant to pay"; (2) this court lacks jurisdiction as the defendant's notice of appeal of the March 13, 2013, probation order was untimely on appeal of

the April 2014 sentencing judgment; and (3) defendant did not "conclusively establish *** the probation department withheld active supervision at all times when defendant was jailed." We agree with the State.

¶ 29 The probational operations assistance fee (705 ILCS 105/27.3a(1.1) (West 2012)) originates as a fee when a defendant is sentenced to probation, but it constitutes a fine when the probation office is not involved. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 38, 13 N.E.3d 1280; see 730 ILCS 5/5-6-3 (West 2012) ("The fee shall be imposed only upon an offender who is actively supervised by the probation and court services department.").

¶ 30 This court does not have jurisdiction to address the original January 2013 probation sentence on appeal of the April 2014 sentence imposed after revocation. "An appeal from a sentence entered upon revocation of probation does not revive voidable errors in the guilty plea proceeding." *People v. Speed*, 318 Ill. App. 3d 910, 915, 743 N.E.2d 1084, 1087 (2001) (citing *People v. Stueve*, 66 Ill. 2d 174, 361 N.E.2d 579 (1977)). "Thus, when the steps set forth in [the supreme court rules] were not taken and the defendant seeks relief from his conviction only after probation is revoked, the appellate court is without jurisdiction to review the underlying judgment unless that judgment is void." *Speed*, 318 Ill. App. 3d at 915, 743 N.E.2d at 1087. In this case, defendant failed to timely appeal his January 2013 probation order. Defendant, instead, wishes to appeal the imposition of the probation fee after his probation was revoked. We must determine whether the underlying probation assessment was void.

¶ 31 At the time of the January 2013 sentencing hearing, the trial court imposed a probation operations fee for the 48 months defendant was sentenced to probation. The circuit clerk's listing of fees reflected the court's order. Defendant has not shown the probation fee was improperly imposed without jurisdiction or authority by the court. See *Castleberry*, 2015 IL

116916, ¶ 15, 43 N.E.3d 932; *People v. Stafford*, 2016 IL App (4th) 140309, ¶ __, __ N.E.3d __ (finding the holding of *Castleberry* applies retroactively). As a result, the underlying judgment is not void, and we are without jurisdiction to review it.

¶ 32 D. DNA Assessment Fee

¶ 33 Defendant was charged for the DNA analysis assessment in Moultrie County case No. 12-CF-50, an unrelated case, and later here in March 2013 in the probation order in Cumberland County case No. 12-CF-74. On appeal, defendant requests we vacate the assessment "[b]ecause the Cumberland County circuit court had no authority to order another fee for DNA analysis, *** and the clerk shows it due and owing after [his] resentencing." The State argues this court lacks jurisdiction to determine the validity of the assessment as it was imposed as a condition of probation in the underlying order filed March 20, 2013. We agree with the State.

¶ 34 As previously indicated, this court does not have jurisdiction to address the original January 2013 probation sentence on appeal of the April 2014 sentence imposed after revocation. See *Speed*, 318 Ill. App. 3d at 915, 743 N.E.2d at 1087. Further, defendant has not shown the assessment was improperly imposed without jurisdiction or authority by the court. See *Castleberry*, 2015 IL 116916, ¶ 15, 43 N.E.3d 932; *Stafford*, 2016 IL App (4th) 140309, ¶ __, __ N.E.3d __. As a result, the underlying judgment is not void, and we are without jurisdiction to review it.

¶ 35 III. CONCLUSION

¶ 36 In case No. 12-CF-25 (No. 4-14-0287), we affirm as modified to reflect presentence credit for May 4, 2012, to May 22, 2012, and December 10, 2012, to January 28, 2013 (total of 68 days); and \$5-per-day credit from May 4, 2012, to May 22, 2012, for a total of

\$95 (19 days x \$5) against creditable fines; and we remand for the issuance of an amended sentencing judgment so reflecting.

¶ 37 In case No. 12-CF-74 (No. 4-14-0288), we award defendant presentence credit for November 11, 2012, to March 10, 2013 (total of 122 days); and \$5-per-day monetary credit for 78 days, \$390, available against creditable fines; and we remand for the issuance of an amended sentencing judgment so reflecting.

¶ 38 As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 39 No. 4-14-0287, Affirmed as modified; cause remanded with directions.

¶ 40 No. 4-14-0288, Affirmed as modified in part and vacated in part; cause remanded with directions.