

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).

FILED

November 8, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 140898-U

NO. 4-14-0898

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	DeWitt County
MICHAEL M. HAMPTON,)	No. 11CF18
Defendant-Appellant.)	
)	Honorable
)	William Hugh Finson,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was entitled to a \$5 credit against his fines and 30 days of sentencing credit.
- ¶ 2 In March 2012, pursuant to a plea agreement, defendant, Michael M. Hampton, pleaded guilty to one count of aggravated driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(d)(2)(B) (West 2010)) and one count of driving while his driver’s license was revoked (625 ILCS 5/6-303(a) (West 2010) (text of section eff. until July 1, 2011)), and the DeWitt County circuit court sentenced defendant to 30 months’ probation. In January 2014, the State filed a petition to revoke his probation, and defendant admitted the probation violation. After a June 2014 resentencing hearing, the court sentenced defendant to concurrent prison terms of three years for aggravated DUI and two years for driving while his driver’s license was revoked. Defendant filed a motion to reconsider his resentence, which the court denied.

¶ 3 Defendant appeals, asserting (1) the circuit clerk improperly imposed three of his fees, (2) he is entitled to a \$5 credit against his eligible fines, and (3) he is entitled to 31 days of sentencing credit. We affirm and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 In February 2011, the State charged defendant with two counts of aggravated DUI and one count of driving while his driver's license was revoked, all of which were related to his actions on February 20, 2011. Defendant and the State entered into a plea agreement under which defendant would plead guilty to one count of aggravated DUI and one count of driving while his driver's license was revoked and the State would seek dismissal of the other count of aggravated DUI as well as the charges in DeWitt County case Nos. 11-DT-9, 11-TR-214, and 11-TR-215. The parties agreed defendant would receive a sentence of 30 months' probation with 180 days in jail "with credit for no days heretofore served" (30 days served forthwith and 150 days stayed subject to a remission hearing), which would run concurrently with his prison sentence in LaSalle County case No. 08-CF-554. The agreement also provided defendant would pay (1) a fine of \$1,250; (2) a probation fee of \$25 per month; (3) a public defender's reimbursement of \$300; (4) a DUI equipment fine of \$1,000; and (5) a jail meals fee of \$8.85 per day for time actually served. At a March 2012 hearing, the circuit court concurred with the plea agreement's terms and accepted defendant's guilty plea. It ordered defendant to report to the probation office within 48 hours of his release from prison.

¶ 6 At a June 27, 2012, hearing, defendant stated he had recently been released from prison. In July 2012, the circuit court ordered defendant to make \$50 monthly payments to the DeWitt County circuit court clerk to pay his outstanding fines and fees in this case. In January 2014, the State filed a petition to revoke defendant's probation, alleging a December 26, 2013,

drug test was positive for alcohol and one of defendant's probation conditions was to refrain from using alcohol. At an April 2014 hearing, defendant admitted the allegation in the State's petition to revoke his probation.

¶ 7 In June 2014, the circuit court held a resentencing hearing. Defendant testified he had consumed a few beers, which led to the positive test. After his 2011 DUI, he had successfully completed 75 hours of treatment. He had been consistently "back on the wagon" since his December 2013 relapse, which was only one occasion. Additionally, defendant had been employed for three months and anticipated becoming a full-time employee the next day. After hearing the parties' arguments, the court sentenced defendant to concurrent prison terms of three years for aggravated DUI and two years for driving while his driver's license was revoked. The court also assessed any unpaid court costs. Defendant filed a timely motion to reconsider his resentence, which he later amended. After a September 23, 2014, hearing, the court denied defendant's motion to reconsider his resentence.

¶ 8 On October 10, 2014, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Accordingly, we have jurisdiction of this appeal under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 9 II. ANALYSIS

¶ 10 A. Improper Fees

¶ 11 Defendant first challenges the following three unpaid fees: (1) a \$5 electronic citation fee, (2) a \$265.50 jail meals fee, and (3) a \$750 probation fee. Specifically, he argues the circuit clerk improperly imposed them and the clerk's error constitutes plain error. The State asserts defendant forfeited his challenge, but if he did not forfeit the challenge, then it agrees with defendant's argument.

¶ 12 Here, defendant challenges the imposition of fees. Unlike fines, circuit clerks have statutory authority to impose fees. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Thus, this case does not involve void assessments. However, it does involve fees imposed as part of the original probation sentence and a later revocation of probation and resentencing. “ ‘When no direct appeal is taken from an order of probation and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of that probation, unless the underlying judgment of conviction is void.’ ” *People v. Gregory*, 379 Ill. App. 3d 414, 418, 883 N.E.2d 762, 765-66 (2008) (quoting *People v. Johnson*, 327 Ill. App. 3d 252, 256, 762 N.E.2d 1180, 1183 (2002)). This court has addressed the aforementioned rule in a case concerning a public defender reimbursement fee. In *People v. Somers*, 2012 IL App (4th) 110180, ¶ 35, 970 N.E.2d 606, this court declined to address the public defender reimbursement fee on appeal from resentencing after the revocation of probation. There, the circuit court imposed the fee as a condition of the original probation order, the defendant did not directly appeal the original probation order, and the court did not address the fee at the resentencing hearing. *Somers*, 2012 IL App (4th) 110180, ¶ 35, 970 N.E.2d 606. In reaching that conclusion, we relied on *People v. Jolliff*, 183 Ill. App. 3d 962, 539 N.E.2d 913 (1989). *Somers*, 2012 IL App (4th) 110180, ¶¶ 32-34, 970 N.E.2d 606. In *Jolliff*, 183 Ill. App. 3d at 971, 539 N.E.2d at 919, the defendant asserted the public defender reimbursement fee was improper because the trial court failed to hold an ability to pay hearing. The *Jolliff* court found the defendant’s argument untimely because he did not appeal the original probation order and the issue did not arise during the probation revocation proceedings. *Jolliff*, 183 Ill. App. 3d at 971, 539 N.E.2d at 919. At the resentencing hearing in *Somers*, the circuit court stated “ ‘all financial obligations previously imposed remain in full force [and] effect.’ ”

Somers, 2012 IL App (4th) 110180, ¶ 35, 970 N.E.2d 606. We held the circuit court's order did not expressly reimpose the public defender fee in a manner that would have taken it outside the ambit of *Jolliff*. *Somers*, 2012 IL App (4th) 110180, ¶ 35, 970 N.E.2d at 612.

¶ 13 As in *Somers*, the three fees challenged by defendant were part of the original probation order, and defendant did not appeal that order. At the time of resentencing, the circuit court “also assessed any unpaid court costs.” The record contains no indication the court reviewed the type and amount of the fees. Accordingly, we find defendant’s challenges to the three fees are untimely.

¶ 14 *B. Per Diem Credit*

¶ 15 Defendant asserts he is entitled to a credit of \$5 against his fines for February 20, 2011, the day he was arrested and posted bail in this case. See 725 ILCS 5/110-14(a) (West 2010); *People v. Smith*, 258 Ill. App. 3d 261, 268, 630 N.E.2d 147, 152 (1994) (noting the fact the defendant supplied bail the same day as his arrest does not preclude the award of the credit under section 110-14). The State agrees. We recognize the general rules of forfeiture do not apply to claims for the \$5 *per diem* credit (*People v. Woodard*, 175 Ill. 2d 435, 457, 677 N.E.2d 935, 945 (1997)) and find defendant is entitled to a \$5 credit against his eligible fines on remand.

¶ 16 *C. Sentencing Credit*

¶ 17 Defendant last argues he is entitled to presentence credit under section 5-4.5-100(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-100(b) (West 2010)) for February 20, 2011, and the 30 days he served in jail as a condition of his probation. Section 5-4.5-100(b) of the Code provides, in pertinent part, the following: "the offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for time spent in custody as a result of the offense for which the sentence was imposed." 730

ILCS 5/5-4.5-100(b) (West 2010). The State concedes defendant's argument. We agree defendant is entitled to sentencing credit for the 30 days he served as a condition of his probation but disagree with the credit sought for February 20, 2011. As part of the plea agreement, the parties agreed defendant would not receive credit for any days already served, which would include February 20, 2011. Thus, defendant is not entitled to credit for that day. See *People v. Williams*, 384 Ill. App. 3d 415, 417, 892 N.E.2d 129, 131 (2008) ("A defendant has the right to first request sentencing credit at any time unless, as here, he agreed to forego it as part of a plea or other sentencing agreement."). Accordingly, we remand the cause to the circuit court for an amended sentencing judgment reflecting the 30 days of sentencing credit.

¶ 18

III. CONCLUSION

¶ 19 For the reasons stated, we affirm the DeWitt County circuit court's judgment and remand the cause for an amended sentencing judgment consistent with this order. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 20 Affirmed; cause remanded with directions.