

NOTICE
Decision filed 08/01/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120306-U

NO. 5-12-0306

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Hardin County.
)	
v.)	No. 07-CF-24
)	
CHARLES H. CONKLE,)	Honorable
)	Don A. Foster,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Presiding Justice Welch and Justice Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment is amended where the circuit clerk did not have authority to impose fines, where the fines it imposed were miscalculated, and where the circuit court failed to award the defendant a *per diem* credit.
- ¶ 2 The defendant, Charles H. Conkle, appeals the first-stage dismissal of his postconviction petition. On appeal, the defendant argues only that the circuit court erred when it failed to award him a *per diem* credit against his fines, and that the circuit clerk improperly assessed various fines and miscalculated the fines it imposed. For the following reasons, we affirm the order of the circuit court as modified.

¶ 3

BACKGROUND

¶ 4 The defendant was charged with attempted first-degree murder and aggravated battery with a firearm. A jury acquitted the defendant of attempted first-degree murder and convicted him of aggravated battery with a firearm. The circuit court sentenced the defendant to 15 years' imprisonment. The court did not impose any fines, but the circuit clerk assessed various fees, including a Surcharge/LEADS assessment (surcharge) of \$25, a Violent Crime Victims Assistance Fund (VCVA) assessment of \$20, and a Youth Diversion assessment of \$5.

¶ 5

ANALYSIS

¶ 6 On appeal, the defendant argues that the circuit clerk did not have the authority to impose fines, that the Youth Diversion fine is subject to a mandatory \$5 *per diem* credit against fines imposed, and that because the imposition of the Youth Diversion fine affects the assessments of the other two fines, they must be reduced accordingly. He contends that we should remand the cause to the circuit court for the proper imposition of the fines by the court. The State agrees that the Youth Diversion fee is a fine, that the defendant is entitled to a *per diem* credit against this fine as a result of his presentence incarceration, and that the other fines must be reduced. The State contends that remand is unnecessary and that this court can amend the judgment pursuant to Supreme Court Rule 366(a) (eff. Feb. 1, 1994). We note that Rule 366(a) applies to civil appeals, but that this court can modify the judgment of the circuit court in a criminal case pursuant to Supreme Court Rule 615(b)(1).

¶ 7 The imposition of fines and fees is a judicial act. *People v. Scott*, 152 Ill. App. 3d 868, 873 (1987). The clerk of the court is a nonjudicial member of the court and thus cannot impose fines and fees as part of a defendant's sentence. *Id.* The Youth Diversion assessment is a fine as it is punitive in nature. *People v. Price*, 375 Ill. App. 3d 684, 700-01 (2007). A defendant who is incarcerated on a bailable offense is entitled to a \$5 credit against any fines that are imposed for each day of time he serves prior to sentencing, but in no case shall the amount credited exceed the amount of the fine. 725 ILCS 5/110-14 (West 2006). A claim for *per diem* monetary credit may be raised at any time and at any stage of court proceedings, even on appeal in a postconviction proceeding. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). We review a circuit court's imposition of fines and fees *de novo*. *Id.*

¶ 8 Here, the defendant was incarcerated from the date of his arrest on April 21, 2007, to the date of his sentencing on November 25, 2008. He is entitled to a \$5 credit against the Youth Diversion fine for each day he was in custody, up to the total amount of the fine. The defendant's total Youth Diversion fine was \$5. Therefore, the total amount of credit the defendant should have received for the Youth Diversion fine was the fine's total, \$5, reducing the amount of the fine to zero.

¶ 9 Next, section 10(b) of the Violent Crime Victims Assistance Act adds a penalty of \$4 for each \$40, or fraction of \$40, of fines imposed. 725 ILCS 240/10(b) (West 2006). According to section 110-14 of the Code of Criminal Procedure of 1963, the *per diem* credit does not apply to the VCVA assessment. 725 ILCS 5/110-14 (West 2006). Here,

the defendant was assessed a fine of \$5 for the Youth Diversion fine. Therefore, the VCVA assessment should have been \$4, not \$20.

¶ 10 Finally, section 5-9-1(c) of the Unified Code of Corrections imposes a mandatory surcharge of \$10 for each \$40, or fraction of \$40, of fines imposed. 730 ILCS 5/5-9-1(c) (West 2006). Again, the fine imposed for the Youth Diversion assessment was for \$5. Therefore, the mandatory surcharge should have been \$10 and not \$25.

¶ 11 CONCLUSION

¶ 12 For the foregoing reasons, we amend the judgment of the circuit court of Hardin County to reduce the defendant's VCVA assessment to \$4 and the section 5-9-1(c) charge to \$10. The judgment is also amended to award the defendant the \$5 *per diem* credit against the Youth Diversion fine.

¶ 13 Affirmed as modified.