

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).

NO. 4-10-0773

Filed 6/29/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

| | | |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| KEITH SLAUGHTER-MARRISSETTE, |) | No. 09CF1519 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Thomas J. Difanis, |
| |) | Judge Presiding. |

JUSTICE POPE delivered the judgment of the court.
Justices Turner and McCullough concurred in the judgment.

ORDER

Held: (1) The trial court did not err in sentencing defendant to five years' imprisonment where the sentence was (a) within the permissible sentencing range and (b) neither grossly at variance with the purpose of the law nor disproportionate to the nature of defendant's offense.

(2) Defendant is entitled to a \$5 credit against the \$5 drug-court assessment and a reduction of the \$20 violent-crime-victim-assessment-fund assessment to \$4.

In October 2009, defendant, Keith Slaughter-Marrissette, pleaded guilty to obstructing justice, a Class 4 felony (720 ILCS 5/31-4(a) (West 2008)). In December 2009, the trial court sentenced defendant, who was extended-term eligible, to five years' imprisonment with 53 days' sentence credit.

Defendant appeals, arguing (1) his five-year sentence was excessive, (2) he is entitled to a \$5 credit against the \$5 drug-court assessment, and (3) the \$20 violent-crime-victim-assessment-fund assessment (VCVA) should be reduced to \$4. We affirm as modified and

remand with directions.

I. BACKGROUND

At an October 8, 2009, hearing, defendant entered a guilty plea, open as to sentence, to obstructing justice, and the State agreed to unsuccessfully terminate defendant's felony probations in Champaign County Case Nos. 08-CF-996 and 08-CF-86. The trial court admonished defendant of, *inter alia*, his eligibility for a maximum extended-term sentence of six years' imprisonment.

The State provided the following factual basis for defendant's plea. On August 30, 2009, Champaign police stopped a vehicle driven by defendant. Defendant identified himself as Terry Davis and provided a false birth date of 1988. Police were unable to retrieve any information with the supplied name and date of birth. The officers observed defendant attempting to discard an identification card bearing defendant's true name and photograph. The police ran defendant's information and discovered he had an outstanding warrant in Champaign County Case No. 08-TR-20485 for driving on a suspended license.

Defendant's trial counsel requested the trial court release defendant on his own recognizance pending sentencing and track the sentencing in this case with Champaign County Case No. 09-CF-1586, another pending felony case. The court set bond at \$1,000 in each case and allowed defendant's recognizance request. The court admonished defendant to keep the appointments that Court Services would make for him and to make sure he returned for the sentencing hearing. The court stated, "If you're not [present for the December 21, 2009, sentencing hearing,] I'll have that hearing without you, and you can find yourself being sent to prison for up to six years without even being here."

Defendant failed to appear for his December 21, 2009, sentencing hearing. At that hearing, the State presented evidence in aggravation in the form of testimony from police officers Randall Cunningham and Amy Petrilli. Officer Cunningham testified that on September 7, 2009, they responded to complaints about a black male at a Champaign motel with a gun. Several individuals identified defendant to the officers as the man they saw with the gun. One of the witnesses was a resident of the room where the gun was found. Another witness reported hearing defendant argue with another man on the second-floor landing over money and heard defendant say defendant should shoot the man. Officer Petrilli testified when police approached defendant to question him, defendant was on his cell phone and said "he couldn't believe he called the cops." Petrilli also testified "[defendant] asked if we were called because of a gun." Petrilli testified prior to that point, no one had mentioned a gun. The State also cited defendant's prior criminal convictions and noted his poor performance regarding community-based sentences.

Defendant's trial counsel argued defendant's youth and prior age-appropriate employment suggested he had rehabilitative potential. Counsel conceded defendant had substance-abuse problems but stated defendant was prepared to enter treatment to get his addiction under control. Counsel recognized probation did not appear to deter defendant. However, counsel asked the court to consider defendant had not yet been sentenced to the Department of Corrections and stated a minimal sentence would be appropriate.

The trial court stated it reviewed defendant's presentence investigation report (PSI), the TASC (Treatment Alternatives for Safer Communities) report, the testimony, and the statutory factors in aggravation and mitigation. While the court considered a community-based

sentence, it found, given defendant's addiction problems and the fact he had amassed five felony adult criminal convictions at age 20, defendant was dangerous and needed to be incarcerated. (We note it appears from the PSI defendant had three adult felony convictions, counting the conviction for the instant offense: theft (a Class 3 felony) in Champaign County Case No. 08-CF-996; criminal trespass (a Class 4 felony) in case No. 08-CF-86; and obstruction of justice (a Class 4 felony) in case No. 08-CF-1519. Defendant was charged with possession of a firearm (a Class 3 felony) in case No. 09-CF-1586 and possession of a stolen vehicle (a Class 2 felony) in case No. 09-CF-1825, both of which were pending at the time of sentencing, according to the PSI). The court also noted defendant's rehabilitative potential was "nil." The court stated it did not consider defendant's absence at the hearing in determining the term of years. The court sentenced defendant to five years' imprisonment, with sentence credit for 53 days.

On December 28, 2009, defendant was in custody and the trial court admonished him of his appeal rights.

On December 29, 2009, defendant filed a motion to reconsider sentence, which the trial court denied.

This appeal followed.

II. ANALYSIS

On appeal, defendant argues (1) his five-year sentence was excessive, (2) he is entitled to a \$5 credit against the \$5 drug-court assessment, and (3) the \$20 VCVA assessment should be reduced to \$4.

A. Excessive-Sentence Claim

Defendant argues his five-year sentence for obstructing justice was excessive. We

disagree.

A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217 Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). "In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed." *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

"Because the trial court is in a better position to observe the witnesses and consider the relevant factors, its sentencing determination is entitled to great deference." *People v. Kenton*, 377 Ill. App. 3d 239, 245, 879 N.E.2d 402, 407 (2007). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the court abused its discretion and the sentence is manifestly disproportionate to the nature of the case." *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1094 (2006).

In this case, defendant pleaded guilty to obstructing justice, a Class 4 felony. 720 ILCS 5/31-4(d)(1) (West 2008). A Class 4 felony carries a sentencing range of one to three years in prison. 730 ILCS 5/5-8-1(a)(7) (West 2008). However, defendant was also eligible for an extended-term sentence based on his prior felony convictions. An extended-term sentence for a Class 4 felony ranges from three to six years in prison. 730 ILCS 5/5-8-2(a)(6) (West 2008). Defendant's five-year sentence fell within the relevant sentencing range. We will not disturb a sentence within the permissible range absent an abuse of discretion.

The trial court stated it reviewed (1) the information contained in defendant's PSI and TASC reports, (2) the testimony, and (3) the statutory factors in aggravation and mitigation.

The court observed while defendant was only 20 years old, he had become involved in the juvenile system in September 2004, when he was placed on probation. A supplemental petition indicated aggravated unlawful use of a weapon. Defendant was repeatedly sentenced to probation and was ultimately sent to the Juvenile Division of the Department of Corrections. As a juvenile on probation, he was ordered several times to get substance-abuse evaluations and follow treatment recommendations. A petition to revoke was filed indicating he did not do so.

In 2007, defendant had a criminal conviction and was ordered to get a substance-abuse evaluation. A petition to revoke was filed, and defendant was ordered for a fourth time to get a substance-abuse evaluation.

In June 2008, defendant was convicted of a felony, given probation, and ordered for a fifth time to get a substance-abuse evaluation. He was then convicted of a Class 4 felony, criminal trespass to a residence, sentenced to probation, and ordered for a sixth time to get a substance-abuse evaluation. While the PSI indicated defendant had successfully completed outpatient substance-abuse treatment in October 2008, defendant admitted during the presentence investigation he was still using marijuana on a daily basis.

The trial court noted the aggravated-unlawful-use-of-a-weapon charge, filed as part of a juvenile petition, and the testimony at sentencing that defendant had access to a pistol in September 2009. The court also noted defendant's rehabilitative potential was "nil." The court concluded defendant was dangerous and needed to be incarcerated.

In this case defendant was eligible for a maximum extended term of six years in prison for obstructing justice. The trial court was in the best position to fashion an appropriate sentence. After considering the aggravating and mitigating factors, the court fashioned a five-

year sentence, which is within the statutory sentencing range. Based on a review of the record, we find no abuse of discretion in the court's imposition of a five-year prison term.

B. \$5-Per-Day Credit

Defendant argues he should receive monetary credit for time spent in custody against the \$5 drug-court charge.

Section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure Code) provides the following:

"Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant." 725 ILCS 110-14(a) (West 2008).

In this case, it is undisputed defendant was incarcerated 53 days on a bailable offense. As a result, defendant has \$265 in available credit against his fines. The State concedes defendant should receive a \$5 credit against the \$5 drug-court "fee" because it is more in the nature of a fine. We accept the State's concession and agree.

The central characteristic separating a fee from a fine is how the attributes of the charge are to be used. See *People v. Paige*, 378 Ill. App. 3d 95, 101-02, 880 N.E.2d 675, 682 (2007). "[A] charge is a fee if and only if it is intended to reimburse the [S]tate for some cost incurred in [the] defendant's prosecution. [Citations.]" *Paige*, 378 Ill. App. 3d at 102, 880 N.E.2d at 682 (quoting *People v. Jones*, 223 Ill. 2d 569, 600, 861 N.E.2d 967, 986 (2006)). The revenue from the \$5 charge imposed is intended "for the operation and administration of the drug

court" (55 ILCS 5/5-1101(f) (West 2008)) and not to reimburse the State for costs incurred as a result of prosecuting defendant, who was not transferred to drug court. As a result, the \$5 assessment is a fine. Because the assessment is a fine, defendant is entitled to apply his available credit toward that assessment.

C. \$20 VCVA Assessment

Defendant argues the \$20 VCVA fine should be reduced to \$4. The State agrees and concedes remand is necessary. We accept the State's concession and agree.

Pursuant to section 10(c)(2) of the Violent Crime Victims Assistance Act, the \$20 VCVA assessment is to be imposed only where the defendant is convicted of a qualifying felony and no other fine is imposed. See 725 ILCS 240/10(c)(2) (West 2008). As stated, the \$5 drug-court assessment is a fine because the record does not show it was sought to reimburse the State for any costs incurred in defendant's prosecution. See *Paige*, 378 Ill. App. 3d at 102, 880 N.E.2d at 682.

Where another fine is imposed, section 10(b) of the Procedure Code requires "there shall be an additional penalty collected *** upon conviction[,] *** of \$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008). In this case, the drug-court fine is \$5. Accordingly, defendant's VCVA assessment should be modified to \$4 because the fine totals less than \$40. See 725 ILCS 240/10(b) (West 2008).

III. CONCLUSION

For the reasons stated, we remand for a reduction of the VCVA assessment to \$4 and for the \$5 credit against the drug-court fee. Because the record in this case shows all costs have already been paid out of defendant's bond money, we remand to the trial court to determine

the allocation of the \$21 remaining balance. We otherwise affirm the trial court's judgment.

Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985), citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978).

Affirmed as modified; cause remanded with directions.