

NOTICE
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2014 IL App (4th) 121027-U

NO. 4-12-1027

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 17, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
DEBRACEY JORRELL MALONE,)	No. 11CF927
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Appleton and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed in part, vacated in part, and remanded with directions, concluding (1) defendant was entitled to an additional 55 days in sentencing credit for time spent in simultaneous custody on unrelated crimes, (2) defendant was entitled to \$680 in *per diem* credit to offset his fines, and (3) the State's Attorney records automation fee was a fine imposed in violation of *ex post facto* principles.

¶ 2 Following a July 2012 bench trial, the trial court found defendant, Debracey Jorrell Malone, guilty of unlawful possession of between 10 and 30 grams of cannabis—subsequent offense (720 ILCS 550/4(c) (West 2010)). In October 2012, the court sentenced defendant to four years in prison, ordering him by supplemental sentencing judgment to pay various assessments and crediting him with 96 days and \$480 for time spent in pretrial custody.

¶ 3 Defendant appeals, arguing he is entitled to 151 days of sentencing credit and a corresponding \$755 in *per diem* credit.

¶ 4 We affirm in part, vacate in part, and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 In October 2011, a grand jury indicted defendant, Debracey Jorrell Malone, with one count of unlawful possession of cannabis—subsequent offense, a Class 4 felony, for knowingly and unlawfully possessing between 10 and 30 grams of cannabis after having previously been convicted of delivery of a controlled substance. 720 ILCS 550/4(c) (West 2010). The trial court found probable cause to detain defendant.

¶ 7 At the time of the indictment, defendant had been on parole for 20 months and had 4 months of parole remaining. On November 7, 2011, the McLean County sheriff's office sent a letter to the Stateville Correctional Center (Stateville), indicating defendant was being transported to Stateville on November 8, 2011, on a parole warrant and requesting that Stateville not release defendant before contacting the sheriff's office. On January 3, 2012, defendant was discharged from the Illinois Department of Corrections (DOC) after his parole expired and remanded to the county jail in lieu of bond. On March 19, 2012, defendant posted a cash bond.

¶ 8 Following a July 26, 2012, bench trial, the trial court found defendant guilty. In August 2012, defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. In October 2012, the parties appeared before the court. The court denied defendant's posttrial motion and sentenced defendant to four years in prison.

Additionally, by supplemental sentencing judgment, the court ordered defendant to pay (1) a \$10 Drug Court fee (55 ILCS 5/5-1101(d-5) (West 2012)); (2) a \$15 Child Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2012)); (3) a \$30 juvenile records expungement fine (730 ILCS 5/5-9-

1.17(a) (West 2012)); (4) a \$500 drug treatment assessment fee (720 ILCS 550/10.3(a) (West 2012)); (5) a \$100 drug trauma fund fine (730 ILCS 5/5-9-1.1(b) (West 2012)); (6) a \$100 drug lab analysis fee (730 ILCS 5/5-9-1.4(b) (West 2012)); (7) a \$25 parole violator fine (730 ILCS 5/5-9-1.20 (West 2012)); and (8) a \$2 State's Attorney records automation fee (55 ILCS 5/4-2002(a) (West 2012)). The court also ordered defendant to pay court costs, a statutory surcharge (730 ILCS 5/5-9-1(c) (West 2012)), and a violent crime victims assistance (VCVA) fee (725 ILCS 240/10(b) (West 2012)), all of which the circuit clerk was to calculate.

¶ 9 The trial court credited defendant with 96 days for the time defendant served from October 21, 2011, to November 8, 2011, and from January 3, 2012, to March 19, 2012. The court also found defendant was entitled to a corresponding \$480 in *per diem* credit pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/110-14(a) (West 2012)).

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant asserts he is entitled to 151 days of sentencing credit and a corresponding \$755 in *per diem* credit. The State concedes defendant is entitled to 55 days of additional sentencing credit but asserts defendant's argument related to the *per diem* credit is moot because defendant has already been given enough credit to cover his fines.

¶ 13 A defendant is entitled to credit "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). In *People v. Robinson*, 172 Ill. 2d 452, 454, 463, 667 N.E.2d 1305, 1306, 1310 (1996), the supreme court concluded that a defendant who was in simultaneous custody awaiting trial and sentencing on two unrelated charges should receive sentencing credit on both offenses for each day spent in

simultaneous custody. Here, the trial court credited defendant for the time he spent in custody from October 21, 2011, to November 8, 2011, and from January 3, 2012, to March 19, 2012. However, defendant was also in DOC custody from November 8, 2011, to January 3, 2012, on a parole warrant. Because defendant was being held simultaneously on a parole hold and on the unlawful-possession-of-cannabis charge between November 8, 2011, and January 3, 2012, we agree with both defendant and the State that defendant is entitled to an additional 55 days of sentencing credit. See *People v. Newman*, 211 Ill. App. 3d 1087, 1099, 569 N.E.2d 1089, 1097 (1991) (The defendant was "entitled to credit for the entire time he spent in jail between the day of his arrest and the day of his sentencing, notwithstanding that during this time he served approximately one month in the Department of Corrections for a parole violation.").

¶ 14 Defendant also contends he is entitled to a total of \$755 in *per diem* credit—\$5 for each of the 151 days he spent in custody. The State responds that the issue of additional *per diem* credit is moot because defendant was assessed a total of \$480 in fines, and credit under section 110-14 operates only to offset creditable fines, not fees. See *People v. Jones*, 223 Ill. 2d 569, 580, 861 N.E.2d 967, 974 (2006).

¶ 15 Here, the trial court ordered defendant to pay the following assessments: (1) a \$10 Drug Court fee (55 ILCS 5/5-1101(d-5) (West 2012)); (2) a \$15 Child Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2012)); (3) a \$30 juvenile records expungement fine (730 ILCS 5/5-9-1.17(a) (West 2012)); (4) a \$500 drug treatment assessment fee (720 ILCS 550/10.3(a) (West 2012)); (5) a \$100 drug trauma fund fine (730 ILCS 5/5-9-1.1(b) (West 2012)); (6) a \$100 drug laboratory analysis fee (730 ILCS 5/5-9-1.4(b) (West 2012)); (7) a \$25 parole violator fine (730 ILCS 5/5-9-1.20 (West 2012)); (8) a \$2 State's Attorney records automation fee (55 ILCS 5/4-2002(a) (West 2012)); (9) a statutory surcharge (730 ILCS 5/5-9-1(c) (West 2012)); (10) a

VCVA fee (725 ILCS 240/10(b) (West 2012)); and (11) court costs. The drug-court and children's-advocacy-center assessments are fines against which defendant was entitled to offset his *per diem* credit, as is the drug assessment. *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 19, 976 N.E.2d 643; *People v. Rhodes*, 386 Ill. App. 3d 649, 657, 899 N.E.2d 335, 341-42 (2008). In addition, the juvenile records expungement fine, drug trauma fund fine, and parole violator fine are all creditable fines. *People v. Williams*, 2013 IL App (4th) 120313, ¶¶ 20, 23-24, app. A, 991 N.E.2d 914.

¶ 16 Despite its statutory label, the State's Attorney records automation fee is also a fine. Pursuant to the statute, "[t]he fee shall be remitted monthly to the county treasurer, to be deposited by him or her into a special fund designated as the State's Attorney Records Automation Fund" and expenditures from the fund "may be made by the State's Attorney for hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/4-2002(a) (West 2012). Thus, the automation fee does not reimburse the State for a cost incurred in defendant's prosecution; rather, it collects moneys to be used to finance future purchases of hardware, software, research, and development costs. Accordingly, the State's Attorney records automation fee is a fine. See *People v. Jake*, 2011 IL App (4th) 090779, ¶ 29, 960 N.E.2d 45 (An assessment is a fee if and only if it is intended to reimburse the State for a cost incurred in the defendant's prosecution.). Public Act 97-673, which added the State's Attorney records automation fee, did not take effect until June 1, 2012, after the date of defendant's offense. Pub. Act. 97-673, § 5 (eff. June 1, 2012). Accordingly, the automation fee must be vacated. See *People v. Devine*, 2012 IL App (4th) 101028, ¶ 10, 976 N.E.2d 624, 628 ("The imposition of a fine that does not become effective until after a defendant commits an offense violates *ex post facto* principles.").

¶ 17 Finally, defendant is not entitled to credit against the laboratory analysis fee, VCVA fee, or statutory surcharge. *Williams*, 2013 IL App (4th) 120313, ¶ 24, 991 N.E.2d 914.

¶ 18 Thus, contrary to the State's calculation, the trial court assessed a total of \$680 in creditable fines. Because defendant was in custody for 151 days, defendant had \$755 of available pretrial credit (151 x \$5). Accordingly, defendant should be awarded \$680 in pretrial credit to offset the \$680 he was assessed in creditable fines. See 725 ILCS 5/110-14 (West 2012) ("[I]n no case shall the amount [of pretrial credit] so allowed or credited exceed the amount of the fine.").

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm in part, vacate in part, and remand with directions to (1) accord defendant presentencing credit for the period from November 8, 2011, to January 3, 2012, (2) direct the trial court to apply a total of \$680 of statutory credit to offset the imposed \$680 in creditable fines, and (3) vacate the \$2 State's Attorney records automation fee.

¶ 21 Affirmed in part and vacated in part; cause remanded with directions.