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2014 IL App (3d) 120911-U

Order filed April 9, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 13th Judicial Circuit,
)	Grundy County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-12-0911
v.)	Circuit No. 10-CF-168
)	
JEREMIE PORTER,)	Honorable
)	Lance R. Peterson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Lytton and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant is entitled to the following sentence adjustments: (1) a \$25 credit against his fines for time spent in presentence custody; (2) a \$100 refund of his probation fees for the five months of probation he did not serve; and (3) a sentencing credit for one more day in presentence custody.

¶ 2 The defendant, Jeremie Porter, was convicted of two counts of forgery (720 ILCS 5/17-3(a)(2) (West 2010)) and placed on probation. While the defendant was on probation, the State filed a petition to revoke, and the defendant submitted a blind admission to the petition. The trial court sentenced the defendant to six years of imprisonment. On appeal, the defendant argues that

he is entitled to: (1) a credit of \$25 based on a \$5-per-day credit against fines; (2) a refund of \$120 in probation fees; and (3) a recalculation of his sentencing credit. We grant the defendant a \$25 credit against his fines, a \$100 refund for unnecessary probation fees, and one extra day of credit for time served.

¶ 3

FACTS

¶ 4

On September 7, 2010, the defendant was charged by indictment with two counts of forgery. The defendant submitted a blind guilty plea on October 23, 2010. The trial court sentenced him to 30 months of Treatment Alternatives for Safe Communities (TASC) probation and 140 days in jail. The defendant was also ordered to pay \$205 in court costs, \$400 for restitution, \$815 in fines and fees, and \$20 per month in probation fees.

¶ 5

On February 25, 2011, the State filed a petition to revoke and issued a warrant for the defendant's arrest. The State's petition alleged that the defendant had been discharged from TASC services because he failed to comply with TASC rules, failed a drug test, and admitted to using cocaine while on probation. The record contains a warrant disposition form, which is not file-stamped, stating that the defendant was transported to the Grundy County jail on February 28, 2011. The record also contains a bail bond form noting that the defendant was released from custody on March 1, 2011.

¶ 6

On June 16, 2011, the defendant submitted a blind admission on the petition to revoke. At the sentencing hearing, the trial court sentenced the defendant to six years' imprisonment, with credit for 142 days served, and one year of mandatory supervised release.

¶ 7

Thereafter, the defendant filed a motion to reconsider the sentence which was denied by the trial court. The defendant appeals.

¶ 8

ANALYSIS

¶ 9

I. \$5-per-day Credit

¶ 10 On appeal, the defendant argues that he is entitled to a \$25 credit against his fines for time he spent in presentence custody. The State concedes this issue.

¶ 11 Section 110-14 of the Code of Criminal Procedure of 1963 provides that any person incarcerated on a bailable offense is entitled to a credit of \$5 per day against his fines. 725 ILCS 5/110-14 (West 2010). Any portion of a day spent in custody is counted as a full day for the purposes of this credit. See *People v. Robinson*, 391 Ill. App. 3d 822 (2009).

¶ 12 As will be discussed later in this order, the defendant spent 143 days in presentence custody, giving him a potential credit of \$715. The defendant argues that his \$5-per-day credit should be applied to the \$5 youth diversion fee, \$15 drug court fine, and \$5 state police operations fee. The youth diversion fee has been determined to be a fine to which the defendant is entitled to a \$5-per-day credit. See *People v. Graves*, 235 Ill. 2d 244 (2009). The state police operation fee is also considered a fine. *People v. Millsap*, 2012 IL App (4th) 110668. Therefore, the defendant is entitled to a credit of \$25 against these fines. Because the defendant has paid his fines in full, we order that he be issued a \$25 refund. See *People v. Molidor*, 2012 IL App (2d) 110006.

¶ 13 II. Probation Fees

¶ 14 The defendant next argues that he is entitled to a refund of \$120 for probation fees. He notes that he was required to pay \$20 per month in probation fees and TASC supervised him from December 22, 2010, until February 24, 2011. Thus, he contends he should be liable for \$40 in fees, rather than the \$160 fee imposed. The State concedes that the defendant is entitled to a refund. However, the State argues that the defendant should be refunded only \$100 because he was supervised for parts of three months.

¶ 15 The statute concerning probation fees states that the defendant must pay "for each month of probation" served by order of the court. 730 ILCS 5/5-6-3(i) (West 2010). The statute

requires a monthly charge and does not state what happens when a defendant does not serve the entire month of probation. 730 ILCS 5/5-6-3(i) (West 2010). We find this monthly fee should be paid in full regardless of whether the defendant actually finished serving the entire month.

Therefore, because the defendant was on probation for parts of three months, he was subject to \$60 in probation fees. Here, the defendant has already paid \$160 in probation fees. Thus, he is entitled to a refund of \$100.

¶ 16

III. Presentence Custody

¶ 17

The defendant next claims he is entitled to a two-day sentencing credit for time spent in presentence custody from February 28 through March 1, 2011. He also claims there is an error which allowed him credit for the day of sentencing that should be amended. The State agrees that the day of sentencing should not be included in the presentence credit, but argues that the defendant is entitled to only one additional day for March 1, 2011. The State argues that because the warrant disposition form, which states that the defendant was arrested on February 28, 2011, was not properly file-stamped or signed, it does not show that the defendant was in custody on that day.

¶ 18

The Unified Code of Corrections provides that a defendant can receive credit against his sentence for time spent in presentence custody. 730 ILCS 5/5-4.5-100(b) (West 2010). A defendant is entitled to one day of credit for each day, or partial day, spent in custody. *People v. Quintana*, 332 Ill. App. 3d 96 (2002).

¶ 19

In this case, the record indicates that the defendant was taken into custody on February 28, 2011, and he remained in jail until he posted bond on March 1, 2011. We acknowledge that the warrant disposition form, which is the only evidence in the record indicating the defendant was arrested on February 28, was not properly file-stamped. Nonetheless, we find that it is

sufficient to show that the defendant was in custody on that date. This finding is consistent with the bail bond form, which states that the defendant was released on bond on March 1, 2011.

¶ 20 In conclusion, we agree with the parties that the defendant was given an extra day of credit in error (see *People v. Williams*, 239 Ill. 2d 503 (2011)), and we find he is entitled to two additional days of credit not granted by the trial court. Therefore, we hold that defendant is entitled to 143 days of sentencing credit, as opposed to the 142 days granted by the trial court.

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Grundy County is affirmed in part and modified in part.

¶ 23 Affirmed in part and modified in part.