



2011 IL App (4th) 090811-U

Filed 9/7/11

NO. 4-09-0811

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
DEQUAN CLARK,	)	No. 09CF915
Defendant-Appellant.	)	
	)	Honorable
	)	Michael Q. Jones,
	)	Judge Presiding.

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

### ORDER

¶ 1 *Held:* (1) This court lacks jurisdiction to review the late and collection fees assessed against defendant because they were imposed after defendant filed his notice of appeal.

(2) Defendant is entitled to \$5 in credit against the \$5 drug-court assessment because the assessment is a fine and not a fee.

(3) The \$25 Violent Crime Victims Assistance Fund assessment is reduced to \$4 where no other fine was assessed.

¶ 2 In September 2009, a jury convicted defendant, Dequan Clark, of aggravated

battery (720 ILCS 5/12-4(b)(8) (West 2008)). In October 2009, the trial court sentenced

defendant to seven years' imprisonment, with credit for 148 days of presentence credit.

Defendant was assessed, *inter alia*, a \$5 drug-court assessment and a \$25 Violent Crime Victims

Assistance Fund (VCVA) assessment, and costs. The court ordered defendant to pay "[a]ll

financial obligations" by April 19, 2010. As of April 19, 2010, nothing had been paid, and on August 3, 2010, the circuit clerk assessed a \$38.25 late fee and an \$87.98 collection fee.

¶ 3 Defendant appeals, arguing (1) the circuit clerk lacked authority to assess the late and collection fees, (2) he is entitled to \$5 in credit against his \$5 drug-court assessment, and (3) the \$25 VCVA assessment should be reduced to \$4. We dismiss in part, affirm in part as modified, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On May 27, 2009, the State charged defendant with aggravated battery, alleging defendant caused bodily harm to Wesley Chamberlain.

¶ 6 During defendant's September 2009 jury trial, Nicholas Sharp, an employee at a bar on Green Street in Champaign, Illinois, testified he observed Chamberlain getting badly beaten by a group of men in the middle of Green Street at approximately 2:45 a.m. Sharp testified Chamberlain was on the ground defenseless while the men punched and kicked him. Sharp testified he was unable to identify defendant as one of the men beating Chamberlain because of the large number of persons involved.

¶ 7 Chamberlain testified he and his friend, Lee Thompson, had a disagreement with a group of men that escalated into a fight when several of the men "started swinging on" Thompson. Thompson fell to the ground, and the men continued to punch and kick him. When Chamberlain attempted to break up the fight, the men began punching and kicking Chamberlain. Chamberlain testified the men continued to kick him in the back and stomach after he fell to the ground. Chamberlain identified defendant as one of the men who attacked him.

¶ 8 Matt Myrick, a sergeant with the University of Illinois police department, testified

he observed a man he identified as defendant kicking Chamberlain while Chamberlain was on the ground. Myrick testified Chamberlain was not putting up a fight or moving and appeared almost unconscious.

¶ 9 Tyron Lyons testified he was present during the altercation. According to Lyons' testimony, Chamberlain and three other men began fighting with Lyons and his friends. Lyons testified defendant did not participate in the fight.

¶ 10 Defendant testified he observed Lyons kicking Chamberlain while Chamberlain was on the ground. However, defendant denied taking part in the attack. Instead, defendant testified he tried to break up the fight and get Lyons to leave with him. Defendant admitted running away when the police arrived but explained it was because he was on probation and not because he had done anything wrong.

¶ 11 On September 15, 2009, the jury convicted defendant of aggravated battery.

¶ 12 On October 14, 2009, defendant filed a motion for a new trial.

¶ 13 On October 21, 2009, the trial court denied defendant's posttrial motion, and the court sentenced defendant as stated.

¶ 14 This appeal followed.

## ¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues (1) the circuit clerk lacked authority to assess collection and late fees, (2) he is entitled to \$5 in credit against his \$5 drug-court assessment, and (3) the \$25 VCVA assessment should be reduced to \$4.

### ¶ 17 A. Late and Collection Fees

¶ 18 A notice of appeal provides a reviewing court with jurisdiction to consider only

the judgments specified in the notice of appeal. *People v. Lewis*, 234 Ill. 2d 32, 37, 912 N.E.2d 1220, 1223 (2009). Once the notice of appeal is filed, the reviewing court has no jurisdiction over matters the trial court decides after that date. *Mitchell v. Atwood Enterprises, Inc.*, 253 Ill. App. 3d 475, 478, 624 N.E.2d 878, 881 (1993). The final judgment in a criminal case is the sentence. *People v. Caballero*, 102 Ill. 2d 23, 51, 464 N.E.2d 223, 236-37 (1984).

¶ 19 In this case, the trial court sentenced defendant on October 21, 2009. As a result, defendant had to file a notice of appeal within 30 days after the judgment or within 30 days after the trial court disposed of the last timely filed motion directed against the judgment. See Ill. S. Ct. R. 606(b) (eff. Sept. 1, 2006). Defendant filed his notice of appeal on October 22, 2009. The clerk assessed late and collection fees on August 3, 2010. Thus, the late and collection fees imposed were not assessed until after defendant filed his notice of appeal. As a result, we do not have jurisdiction to consider the merits of defendant's argument and, accordingly, dismiss this portion of defendant's appeal. See *People v. Jake*, 2011 IL App (4th) 090779, ¶ 24 (appellate court finding it was without jurisdiction to review the circuit clerk's imposition of late and collection fees where those fees were imposed after the defendant's notice of appeal was filed).

¶ 20 B. Per-Day Credit

¶ 21 Defendant argues, and the State concedes, defendant should receive monetary credit for time spent in custody against the \$5 drug-court assessment.

¶ 22 Section 110–14(a) of the Code of Criminal Procedure of 1963 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 5/110–14(a) (West 2008).

¶ 23 The State concedes the \$5 drug-court assessment is a fine because the record does not show it was sought to reimburse the State for any cost incurred as a result of prosecuting defendant. Following our review of the record, we accept the State's concession and agree. A drug-court assessment is a fine, not a fee, if the defendant is not tried in a drug court funded by the assessment. See, e.g., *People v. Sulton*, 395 Ill. App. 3d 186, 191-92, 916 N.E.2d 642, 647-48 (2009) (holding a similar drug-court assessment authorized by section 5–1101(d–5) of the Counties Code (55 ILCS 5/5–1101(d–5) (West 2006)) is a fine if the defendant is not prosecuted in drug court). Because defendant was not tried in drug court, his \$5 drug-court assessment is a fine. Accordingly, it is subject to offset by presentence credit. 725 ILCS 5/110–14(a) (West 2008).

¶ 24 In this case, defendant received credit toward his sentence for 148 days served in presentence custody and is thus entitled to \$740 in potential credit toward fines (\$5 per day for 148 days). It appears from the record defendant has not been given credit toward his drug-court assessment. Accordingly, defendant is entitled to \$5 in credit toward his \$5 drug-court assessment.

¶ 25 C. VCVA Assessment

¶ 26 Defendant argues the \$25 VCVA fine should be reduced to \$4, and the State concedes the fine should be reduced to \$4. We agree.

¶ 27 Pursuant to section 10(c)(1) of the Violent Crime Victims Assistance Act, the \$25

VCVA assessment defendant received 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)(1) (West 2008). As stated, the \$5 drug-court assessment in this case is a fine. Where another fine is imposed, section 10(b) of the Violent Crime Victims Assistance Act 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). Here, the drug-court fine is \$5. Accordingly, defendant's VCVA assessment should be modified to \$4 because the remaining fine totals less than \$40. See 725 ILCS 240/10(b) (West 2008).

¶ 28

### III. CONCLUSION

¶ 29 For the reasons stated, we dismiss those parts of the appeal for which we lack jurisdiction. We remand for the application of defendant's \$740 available credit toward the \$5 drug-court fee and a reduction of the VCVA assessment to \$4 and issuance of an amended sentencing judgment so reflecting. 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)).

¶ 30 Appeal dismissed in part; judgment affirmed in part as modified; cause remanded with directions.