

NOTICE  
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2012 IL App (4th) 100765-U

Filed 1/11/12

NO. 4-10-0765

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
JAMES T. DEBERRY,	)	No. 10CF292
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.  
Justices Pope and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The \$5 youth-diversion fine, \$10 medical-costs fee, \$20 VCVA fine, and \$14.25 Children's Advocacy Center fee were improperly assessed by the circuit clerk. Thus, we vacate and remand to the trial court to reimpose the appropriate fines.

(2) Defendant is entitled to \$5-per-day credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)) against any reimposed fines.

¶ 2 In July 2010, the trial court found defendant, James T. Deberry, guilty of burglary (720 ILCS 5/19-1(a) (West 2010)). In September 2010, the court sentenced him to four years' imprisonment to be followed by a two-year period of mandatory supervised release and ordered him to pay court costs. Additionally, the court gave defendant credit for time previously served from February 20, 2010, through September 1, 2010 (194 days). However, the court failed to specifically identify any assessed fees and fines at the sentencing hearing or in the written



¶ 8 At some point following sentencing, defendant was assessed the following fines:  
(1) \$5-youth-diversion assessment; (2) \$20 VCVA fine; and (3) \$14.25 Children's Advocacy Center fee.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues (1) the circuit clerk lacked authority to assess the (a) \$5 youth-diversion fine, (b) \$5 Anti-Crime Fund fine (although it appears from the circuit clerk's fines and fees information that no such fine was ever imposed), (c) \$20 VCVA fine, and (d) \$14.25 Children's Advocacy Center fee; and (2) if this court reimposes the mandatory fines, defendant is entitled to a \$5-per-day credit against the reimposed fines under section 110-14(a) of the Criminal Procedure Code (725 ILCS 5/110-14(a) (West 2010)).

¶ 12 The State concedes the clerk-imposed fines should be vacated because the trial court never judicially imposed the assessed fines. However, the State argues defendant is not entitled to \$5-per-day credit against any fines reimposed under section 10(b) of the Violent Crime Victims Assistance Act (VCVA Act) (725 ILCS 240/10(b) (West 2010)) or section 17 of the County Jail Act (730 ILCS 125/17 (West 2010)). In his reply brief, defendant argues the State forfeits any argument that the Anti-Crime Fund assessment is not a fine because it makes no mention of the assessment in its brief. Further, defendant concedes he is not entitled to \$5-per-day credit against a reimposed medical-costs assessment and a reimposed VCVA fine.

¶ 13 A. Clerk-Imposed Fines

¶ 14 First, defendant argues the circuit clerk improperly assessed the following fines:  
(1) \$5 youth-diversion fine; (2) \$5 Anti-Crime Fund fine; (3) \$20 VCVA fine, and (3) \$14.25

Children's Advocacy Center fee. Because we note the circuit clerk's fines and fees information does not indicate a \$5 Anti-Crime Fund fine was imposed in this case, we will only address the imposition of the youth-diversion fine, the VCVA fine, and the Children's Advocacy Center fee.

¶ 15 Section 5-1101(e)(2) of the Counties Code (55 ILCS 5/5-1101(e)(2) (West 2010)) authorizes the following youth-diversion assessment against criminal defendants:

"a fee of up to \$5 paid by the defendant on a judgment of guilty or grant of supervision under Section 5-9-1 of the Unified Code of Corrections for a felony; for a Class A, Class B, or Class C misdemeanor; for a petty offense; and for a business offense."

Although labeled a fee, the youth-diversion assessment is considered a fine. *People v. Paige*, 378 Ill. App. 3d 95, 102, 880 N.E.2d 675, 682 (2007).

¶ 16 Additionally, section 10(b) of the VCVA Act (725 ILCS 240/10(b) (West 2010)) grants the trial court the authority to collect "an additional penalty \*\*\* from each defendant upon conviction of any felony" in the amount of \$4 for each \$40, or fraction thereof, of fines imposed. Further, section 10(c)(2) of the VCVA Act (725 ILCS 240/10(c)(2) (West 2010)) allows the court to assess a defendant a fine of "\$20, for any other felony or misdemeanor" when no other fine is imposed. See *People v. Long*, 398 Ill. App. 3d 1028, 1031-32, 924 N.E.2d 511, 514 (2010) (VCVA assessment is a fine).

¶ 17 Further, in counties with a Children's Advocacy Center, section 5-1101(f-5) of the Counties Code (55 ILCS 5/5-1101(f-5) (West 2010)) allows the county board to

"adopt a mandatory fee of between \$5 and \$30 to be paid by the defendant on a judgment of guilty or a grant of supervision under

Section 5-9-1 of the Unified Code of Corrections for a felony; for a Class A, Class B, or Class C misdemeanor; for a petty offense; and for a business offense. Assessments shall be collected by the clerk of the circuit court and must be deposited into an account specifically for the operation and administration of the Children's Advocacy Center."

Notwithstanding the statutory label of fee, the Children's Advocacy Center fee is considered a fine because it was not designed to reimburse the State for money it expended in prosecuting defendant in this case. *People v. Jones*, 397 Ill. App. 3d 651, 660, 921 N.E.2d 768, 775 (2009).

¶ 18 In the present case, the record reveals the trial court did not impose a youth-diversion assessment, VCVA fine, or Children's Advocacy Center fee at sentencing, but the fines later appeared on the circuit clerk's fines and fees information. Because the youth-diversion assessment, VCVA fine, and Children's Advocacy Center fee are all considered fines, those assessments cannot be imposed by the circuit clerk. See *People v. Scott*, 152 Ill. App. 3d 868, 873, 505 N.E.2d 42, 46 (1987) (The imposition of a fine is a judicial act, and the circuit clerk has no authority to levy fines, including mandatory fines.). Accordingly, we vacate the (1) \$5 youth-diversion assessment, (2) \$20 VCVA fine, and (3) \$14.25 Children's Advocacy Center fee, which were improperly imposed by the circuit clerk, and remand the matter to the trial court to reimpose the appropriate fines. Additionally, it appears defendant's VCVA fine was improperly calculated under section 10(c)(2) of the VCVA Act (725 ILCS 240/10(c)(2) (West 2010)) because additional fines were imposed. Instead, the VCVA fine should be calculated under section 10(b) of the VCVA Act (725 ILCS 240/10(b) (West 2010)) when other fines are

assessed.

¶ 19 Further, the State concedes the medical-costs fee imposed under section 17 of the County Jail Act (730 ILCS 125/17 (West 2010)) should be vacated as improperly imposed by the circuit clerk. In response, defendant states as follows: "The defendant does not dispute the State's argument that the medical costs mandatory assessment is a fee and may be assessed against [defendant]. \*\*\* In fact, [defendant] never raised an issue to the contrary." We disagree with defendant's concession and find the medical-costs assessment is a fine, which should be vacated as improperly imposed by the circuit clerk.

¶ 20 Section 17 of the County Jail Act (730 ILCS 125/17 (West 2010)), provides, in pertinent part, as follows:

"The county shall be entitled to a \$10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense. The fee shall be taxed as costs to be collected from the defendant, if possible, upon conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be established and known as the County Jail Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement to the county of costs for medical expenses and administration of the Fund."

¶ 21 "A charge is a fee if and only if it is intended to reimburse the state for some cost

it incurred in defendant's prosecution." *People v. Jones*, 223 Ill. 2d 569, 600, 861 N.E.2d 967, 986 (2006). Because the \$10 assessment under section 17 of the County Jail Act (730 ILCS 125/17 (West 2010)) does not compensate the State for a cost it incurred in prosecuting defendant, the assessment is a fine rather than a fee. See *People v. Jackson*, 2011 IL 110615, ¶ 23, 955 N.E.2d 1164, 1172 (supreme court determined that the imposition of the arrestee's-medical fee was authorized regardless of whether the defendant actually received medical services). Accordingly, we also vacate the \$10 medical-costs assessment improperly imposed by the circuit clerk and remand for the trial court to reimpose the fine.

¶ 22

#### B. Credit

¶ 23 Defendant argues he is entitled to a \$5-per-day credit against any reimposed fines under section 110-14(a) of the Criminal Procedure Code (725 ILCS 5/110-14(a) (West 2010)). The State concedes defendant is entitled to the \$5-per-day credit but notes the credit is not applicable to assessments imposed under the VCVA Act (VCVA fine) or the County Jail Act (medical-costs assessment).

¶ 24 Section 110-14(a) of the Criminal Procedure Code governs the issuance of the \$5-per-day credit and provides as follows:

"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. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110-14(a) (West 2010).

The statutory right to the \$5-per-day credit is mandatory, and a defendant is entitled to this credit despite it not being requested in the trial court. *People v. Woodard*, 175 Ill. 2d 435, 457, 677 N.E.2d 935, 945-46 (1997).

¶ 25 In the present case, the record indicates that defendant was given credit for time previously served from February 20, 2010, through September 1, 2010. Accordingly, he is entitled to \$5-per-day credit against any reimposed fines, excluding any fines reimposed under section 10(b) of the VCVA Act or medical-costs fees assessed under section 17 of the County Jail Act. See 725 ILCS 240/10(b) (West 2010) (VCVA fine "shall not be considered a part of the fine for purposes of any reduction made in the fine for time served."); see also 730 ILCS 125/17 (West 2010) (medical-costs fee "shall not be considered a part of the fine for purposes of any reduction in the fine").

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we vacate the (1) \$5 youth-diversion assessment; (2) \$10 medical-costs fee; (3) \$20 VCVA fine; and (4) \$14.25 Children's Advocacy Center fee. Further, we remand this cause for the trial court to reimpose the appropriate fines and to give defendant \$5-per-day credit against any reimposed fines, excluding fines assessed under section 10(b) of the VCVA Act or section 17 of the County Jail Act. We otherwise affirm. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 28 Affirmed in part as modified and vacated in part; cause remanded with directions.