

No. 1-04-3362

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
)	the Circuit Court
Plaintiff-Appellee,)	of Cook County.
)	
v.)	No. 01 CR 10799
)	
ALFREDO GUTIERREZ,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding

JUSTICE THEIS delivered the opinion of the court:

Following a bench trial, defendant Alfredo Gutierrez was convicted of aggravated battery with a firearm and aggravated unlawful use of a weapon and was sentenced to concurrent prison terms of six years and one year respectively. On appeal, defendant contends that the trial court's assessment of a \$4 additional penalty pursuant to section 5-9-1(c-9) of the Unified Code of Corrections (the Code) (730 ILCS 5/5-9-1(c-9) (West 2004)), violated the *ex post facto* clause of the United States Constitution. Alternatively, defendant contends that the \$4 is to be offset by the \$5-per-day credit for the 27 days he spent in custody prior to sentencing. For the following reasons, we vacate the \$4 penalty and otherwise affirm his convictions and sentences.

Defendant's convictions arose from a drive-by shooting on April 11, 2001, in which the victim, Martin Carranza, suffered a gunshot wound to his leg. Defendant has not raised any issues on appeal with respect to his convictions. Rather, defendant challenges the court's

1-04-3362

imposition of the \$4 additional penalty for the Traffic and Criminal Conviction Surcharge Fund (730 ILCS 5/5-9-1 (c-9) (West 2004) as violating *ex post facto* laws because it was an additional punishment not in effect at the time of defendant's offense. The State maintains that the penalty is not punitive in nature and therefore not in violation of the prohibition against *ex post facto* laws.

Imposition of a punishment greater than the one in effect when the offense was committed violates the prohibition of *ex post facto* laws under the United States Constitution. U.S. Const., art. I, §10. The ban against *ex post facto* laws applies only to laws that are punitive in nature, and does not apply to costs, which are compensatory in nature. People v. Bishop, 354 Ill. App. 3d 549, 561, 821 N.E.2d 677, 688-89 (2004).

The \$4 additional penalty was added to the statute effective June 20, 2003. Pub. Act 93-32, eff. June 20, 2003 (adding 730 ILCS 5/5-9-1(c-9)). Thus, this section was not in effect at the time defendant committed the offenses for which he has been convicted and sentenced. Furthermore, in People v. Jamison, No. 1-04-2219, slip op. at 4-7 (Ill. App. April 12, 2006), this court recently rejected the State's argument that the \$4 additional penalty is not punitive in nature. Rather, the court held that based upon the plain language of the statute, the \$4 imposed is a pecuniary punishment in the nature of a fine. Accordingly, since the assessment of the \$4 imposes a punishment greater than that in effect when defendant's offense was committed, we agree that it violates *ex post facto* laws.

For the foregoing reasons, we vacate the \$4 penalty imposed for the Traffic and Criminal Conviction Surcharge Fund and direct the circuit court of Cook County to modify the sentencing

1-04-3362

order accordingly. We otherwise affirm defendant's convictions and sentences.

Affirmed in part; vacated in part.

HOFFMAN, P.J., and ERICKSON, J., concur.

REPORTER OF DECISIONS - ILLINOIS APPELLATE COURT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

ALFREDO GUTIERREZ,

Defendant-Appellant.

No. 1-04-3362

Appellate Court of Illinois
First District, Third Division

Filed: May 17, 2006

JUSTICE THEIS delivered the opinion of the court.

Hoffman, P.J., and Erickson, J., concur.

Appeal from the Circuit Court of Cook County
Honorable Kenneth J. Wadas, Judge Presiding

For APPELLANT,

Michael J. Pelletier, State Appellate Defender
Michael H. Orenstein, Assistant Appellate Defender
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601

For APPELLEE,

Richard A. Devine, State's Attorney
James E. Fitzgerald, Assistant State's Attorney
Paula Borg, Assistant State's Attorney
Christopher James Petelle, Assistant State's Attorney
300 Richard J. Daley Center
Chicago, IL 60602