

No. 1-13-0085

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 965
	)	
MICHAEL NASH,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE TAYLOR delivered the judgment of the court.  
Justices Howse and Epstein concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), defendant is entitled to a credit of \$5 per day for each of the 39 days he was in custody prior to sentencing. Defendant's remaining fines and fees challenges fail where the record does not reflect the requisite findings by the trial court or a proper request by defendant.

¶ 2 Following a bench trial, defendant was found guilty of possession of cannabis and sentenced to 30 months of probation. On appeal, he contends that the trial court failed to award

him presentence custody credit and improperly imposed certain fines and fees. We affirm and correct the fines and fees order.

¶ 3 The evidence at defendant's bench trial established, through the testimony of Officers Michael Callahan and Patrick Gilmore, that a vehicle driven by defendant was curbed after it was observed using an alley as a through street. As Callahan approached the vehicle, he smelled a strong odor of "fresh" cannabis. When Callahan was at approximately the bumper of the vehicle, it sped away. After hearing a flash message about the vehicle, Gilmore and his partner followed the vehicle until it came to a stop and defendant emerged from the passenger side. Gilmore watched as defendant, who was holding a shoe box like a football, ran around the vehicle into a yard. Gilmore chased defendant and ultimately took him into custody. Gilmore recovered the shoe box which held, *inter alia*, a notebook computer and a bag. This bag contained 11 smaller knotted bags containing suspect cannabis. Gilmore subsequently inventoried the bag.

¶ 4 The parties stipulated that forensic scientist Maureen Bomarito would testify, if called to testify, that she tested 2 of the 11 items contained in the bag recovered from defendant's shoe box and that these items tested positive for cannabis and weighed 55.4 grams. Ultimately, the trial court found defendant guilty of possession of cannabis.

¶ 5 After hearing argument in aggravation and mitigation, the trial court sentenced defendant to 30 months of intensive probation services, which would require 130 hours of community service. The court asked the State for the total of the "statutory fines and fees," and the State responded \$1,370. The court then imposed fines and fees in the amount of \$1,370, and indicated that defendant would receive a credit of \$5 per day for each of the 39 days he was in custody prior to sentencing. Although defendant's mittimus indicates that he is entitled to 39 days of presentence custody credit, the corresponding dollar amount is not indicated.

¶ 6 The court then heard argument on the State's motion to reimburse the county for the costs of defendant's representation by the Public Defender. The court inquired whether defendant had any bank accounts, owned any real property, or held any stocks or bonds. Defendant answered in the negative. Although defendant acknowledged that he owned a car, he indicated that it did not work. The trial court then denied the State's motion.

¶ 7 On appeal, defendant challenges the calculation and assessment of certain fines and fees imposed by the trial court. The State responds that defendant has forfeited these claims by failing to raise them before the trial court. This court has recognized, however, that a sentencing error may affect a defendant's substantial rights, and, consequently, can be reviewed for plain error. See *People v. Black*, 394 Ill. App. 3d 935, 939 (2009), citing *People v. Hicks*, 181 Ill. 2d 541, 544-45 (1998). The propriety of court-ordered fines and fees raises a question of statutory interpretation, which this court reviews *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 8 Defendant first contends, and the State concedes, that he is entitled to a \$5 per day credit for each of the 39 days he was in custody before sentencing, for a total of \$195. See 725 ILCS 5/110-14(a) (West 2010). Defendant has several fines against which he can apply this credit, including, *inter alia*, the \$30 Child Advocacy Center assessment (see *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009)), and the \$500 cannabis fine (see 720 ILCS 550/10.3(a)(4) (West 2010)). Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we order that the fines and fees order be corrected to reflect \$195 in presentence custody credit. See 725 ILCS 5/110-14(a) (West 2010) (credit is applied against fines; in no case shall the amount credited exceed the amount of the fines).

¶ 9 Defendant next contends that the trial court erred in assessing certain fees when the court effectively determined, based upon its denial of the State's motion for reimbursement, that defendant lacked the means to pay these fees. Defendant argues that because the trial court determined that he was indigent, the court had the discretion to not assess the \$15 document storage fee imposed pursuant to section 105/27.3c(a) of the Clerks of Courts Act (705 ILCS 105/27.3c(a) (West 2010)), and the \$100 crime lab drug analysis fee imposed under section 5-9-1.4(b) of the Unified Code of Corrections (730 ILCS 5/5-9-1.4(b) (2010)). See 705 ILCS 105/27.3c(c) (the document storage fee may be waived "only if the judge specifically provides for the waiver of the court document storage fee"); 730 ILCS 5/5-9-1.4(b) (2010) ("[u]pon verified affidavit of the person, the court may suspend part or all of the fee if it finds that the person does not have the ability to pay the fine").

¶ 10 The State responds that although the trial court denied the State's motion for reimbursement after questioning defendant regarding his finances, the trial court did not specifically provide for the waiver of the court document storage fee or make a specific finding that defendant did not have the ability to pay the crime lab drug analysis fee. The State argues that in the absence of a specific finding by the trial court pursuant to the statutes at issue, the fines were properly assessed. We agree with the State.

¶ 11 The interpretation of a statute is a question of law which we review *de novo*. *People v. Carter*, 213 Ill. 2d 295, 301 (2004). When interpreting a statute, a court must ascertain and give effect to the intent of the legislature, and the language of the statute is the most reliable indicator of that intent. *Carter*, 213 Ill. 2d at 301. When "the language in the statute is clear and unambiguous it must be applied as written without resorting to extrinsic aids of construction." *People v. Fields*, 2011 IL App (1st) 100169, ¶ 18.

¶ 12 Pursuant to section 105/27.3c(c) of the Clerks of Courts Act (705 ILCS 105/27.3c(c) (2010)), the document storage fee may be waived "only if the judge specifically provides" for its waiver. Here, in the absence of such a provision by the trial court, the unambiguous language of the statute must be applied and defendant's argument must fail. See *Fields*, 2011 IL App (1st) 100169, ¶ 18. Similarly, although a court may, upon verified affidavit from a defendant, suspend part or all of crime lab drug analysis fee if it finds that the defendant does not have the ability to pay (see 730 ILCS 5/5-9-1.4(b) (2010)), in this case the record contains no such finding by the trial court. Therefore, defendant's argument must fail. See *Carter*, 213 Ill. 2d at 301.

¶ 13 Defendant finally contends that he is entitled, pursuant to section 550/10.3(e) of the Criminal Code of 1961 (see 720 ILCS 550/10.3 (e) (West 2010)) (the Code), to a credit of \$4 per hour for each of the 130 hours of community service he must perform for a total of \$520.

¶ 14 The State responds, and we agree, that although section 550/10.3(e) of the Code permits a defendant who has been ordered to pay an assessment to "petition the court to convert all or part of the assessment into court-approved public or community service" at a rate of \$4 per hour (see 720 ILCS 550/10.3(e) (West 2010)), in the case at bar, there is no indication in the record that defendant made such a petition to the trial court. Thus, defendant's argument must fail.

¶ 15 Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the fines and fees order to reflect \$195 in presentence custody credit and a total due of \$1,175. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 16 Affirmed; fines and fees order corrected.