2016 IL App (1st) 133195-U

FIFTH DIVISION
August 26, 2016

No. 1-13-3195

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 21536
	)	
MARLON BRADLEY,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's fines and fees order corrected.

¶ 2 Following a bench trial, defendant Marlon Bradley was found guilty of burglary, then sentenced, as a Class X Offender (730 ILCS 5/5-4.5-25 (West 2012)), to eight years' imprisonment. On appeal, defendant contests the assessment of certain fines and fees imposed by the trial court. Defendant also asserts he should be able to use his presentence incarceration credit to offset various fines.

¶ 3 The record on appeal indicates defendant was charged by indictment with burglary. At trial, Waiel Aubodeid (Aubodeid) testified he was the manager of the Connect Cell Phone store at South Halsted Street in Chicago, Illinois. On October 24, 2012, Aubodeid closed the store at 9 p.m. The following morning, on October 25, 2012, Aubodeid returned to the store and noticed water on the floor and missing merchandise. He also observed a large hole in the wall that led into the restaurant adjacent to the store. The store was equipped with video surveillance equipment, and the footage was published to the trial court. Aubodeid identified defendant on a video footage on October 25, 2012; the video indicated defendant was inside the store near the cash register around 6 a.m., and just outside the store about an hour later.

¶ 4 The State rested and defendant did not present any evidence on his behalf. Following closing arguments, the court found defendant guilty of burglary. At a subsequent sentencing hearing, the court sentenced defendant to eight years' imprisonment. The court also credited defendant with 314 days of presentence custody and assessed him various fines and fees totaling $699.

¶ 5 On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction. Instead, he solely contends that several of the assessments imposed by the trial court should be vacated and that he should be permitted to use his presentence incarceration credit to offset some of the fines imposed.

¶ 6 Defendant asserts that when a fine imposed does not conform to a statutory requirement, the fine is void, which is an issue that may not be forfeited. See *People v. Marshall*, 242 Ill. 2d 285, 302 (2011). In light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, this rule no longer

applies. On appeal, however, the reviewing court may modify the fines and fees order without remanding the case back to the circuit court. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) ("[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken"); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) ("[r]emandment is unnecessary since this court has the authority to directly order the clerk of the circuit court to make the necessary corrections"). The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 7 Defendant first contends, the State concedes, and we agree that he was improperly assessed a $250 DNA analysis fee. The DNA Analysis fee is assessed when defendant submits specimens for analysis and categorization into genetic marker grouping. 730 ILCS 5/5-4-3(j) (West 2012). The supreme court has held that this fee can be assessed only on an individual whose DNA is not already on file in the State's database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). There is a presumption that defendant's DNA is already on file where he has been convicted of a felony after the DNA requirement went into effect in the 1997 amendment to section 5-4-3 of the Unified Code of Correction (Pub. Act 90-130 (eff. Jan. 1, 1998) (amending 730 ILCS 5/4-4-3 (West 1996)). *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Here, defendant has several felony convictions, including a 2003 conviction for armed robbery. We therefore presume defendant’s DNA was already on file at the time of his present conviction, and he was thus not required to submit a specimen for DNA analysis in this case. Accordingly, we vacate the assessment. *Marshall*, 242 Ill. 2d at 303.

¶ 8 Defendant next contends, the State concedes, and we agree that he was improperly assessed a $20 Probable Cause Hearing fee. Section 5/4-2002.1(a) of the County's Code provides that the State's attorney shall be entitled to a $20 fee for "preliminary examination for each defendant held to bail or recognizance." 55 ILCS 5/4-2002.1 (West 2012). In this case, defendant did not have a probable cause hearing. Accordingly, we vacate the assessment. See *People v. Smith*, 236 Ill. 2d 162, 174 (2010).

¶ 9 Defendant next contends, the State concedes, and we agree that he was improperly assessed a $5 Electronic Citation fee. The Electronic Citation Fee applies only when the defendant is found guilty in "any traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West Supp. 2011). Because defendant was convicted of burglary, which is not a violation enumerated by the statute, the assessment of the fee was inappropriate and we vacate it.

¶ 10 Defendant next argues his presentence incarceration credit offsets various assessments. Defendant spent 314 days in presentence custody, for which he was entitled to a $5-per-day presentence custody credit to offset his fines. 725 ILCS 5/110-14(a) (West 2012). Defendant first contends, the State concedes, and we agree, that defendant is entitled to offset the $10 mental health court assessment (see *People v. Graves*, 235 Ill. 2d 244, 251-52 (2009)), the $5 youth diversion/peer court assessment (see *id.*), the $5 drug court assessment (see *People v. Unander,* 404 Ill. App. 3d 884, 886 (2010)), the $30 Children's Advocacy Center assessment (see *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009)), the $50 court system fee (see *People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶ 30-31) ("we hold that the court systems fee assessed in this case

was actually a fine"), and the $15 State Police operations assistance fee (see *Milsap*, 2012 IL App (4th) 110668, ¶ 31) ("[d]espite it's statutory label, the State Police operations assistance fee is also a fine").

¶ 11 Defendant finally contends he should be permitted to use his presentence custody credit to offset the $2 Public Defender records automation fee and the $2 State's Attorney records automation fee because, despite being labeled as fees, they are actually fines. The Public Defender records automation fee requires defendant to pay a $2 assessment "to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/3-4012 (West 2012). Similarly, under the State's Attorney records automation fee, defendant is required to pay a $2 assessment "to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/4-2002.1(c) (West 2012).

¶ 12 As the State points out, the Fourth District appellate court recently determined that the State's Attorney records automation assessment was compensatory in nature, and, therefore, a fee. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. In *Rogers*, the court stated the "assessment is a fee because it is intended to reimburse the State's Attorney for their expenses related to automated record-keeping systems." *Rogers*, 2014 IL App (4th) 121088, ¶ 30. Defendant acknowledges the decision in *Rogers*, but urges us to apply the supreme court's holding in *People v. Graves*, where the supreme court stated that a fee is intended to compensate the State for the costs of prosecuting defendant, while fines are punitive in nature. *Graves*, 235 Ill. 2d at 250. He maintains that these assessments do not reimburse the State for costs incurred

in defendant's specific prosecution, but are collected to finance future purchases of automated record-keeping systems.

¶ 13 We believe the Fourth District properly interpreted the supreme court's holding in *Graves* in deciding *Rogers*. The statutory language of section 5/4-2002.1(c) of the Counties Code sets forth that the assessment is intended to compensate the State for the costs of prosecuting defendant by offsetting the State's costs in establishing and maintaining automated record keeping systems (55 ILCS 5/4-2002.1(c) (West 2012)), and, as such, is a fee, which may not be offset by presentence custody credit (*Jones*, 397 Ill. App. 3d at 664). It therefore follows that the $2 Public Defender records automation fee is intended as a fee to compensate the office of the public defender for costs incurred in defending defendant, and may not be offset by defendant's presentence custody credit.

¶ 14 Accordingly, we order the clerk of the circuit court to modify defendant's fines and fees order in accordance with this order, reflecting a total assessment of $309, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 15 Affirmed; fines and fees order modified.