

No. 1-14-1369

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).

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. 13 CR 7360
)	
CLARENCE WOODS,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant awarded \$65 worth of presentence custody credit toward his court system assessment and State Police operations assessment, which are fines; remaining challenged assessments are fees, for which he is not entitled to presentence custody credit.

¶ 2 Following a bench trial, defendant Clarence Woods was found guilty of two counts of aggravated robbery and sentenced to 12 years' imprisonment on both convictions, to be served concurrently. On appeal, he challenges several assessments imposed against him, arguing that they are actually fines and he should therefore receive presentence custody credit toward them. We order a correction of defendant's fines and fees order.

¶ 3 The evidence at trial showed that on March 6, 2013, Gregory Petty and Chris Zeigler were at a currency exchange in Chicago so Zeigler could cash her "tax return[]" and give Petty his fee for preparing her taxes for the year. After Zeigler received her money, she and Petty exited the currency exchange and returned to Petty's vehicle. As they were inside the vehicle, defendant walked by, demanded their money and showed them a firearm. Defendant ended up taking \$300 from Petty and approximately \$2,000 from Zeigler.

¶ 4 Following defendant's bench trial, the trial court found him guilty of two counts of aggravated robbery and not guilty of armed robbery and aggravated unlawful restraint. The court subsequently sentenced him to 12 years' imprisonment on both convictions, to be served concurrently. The court also imposed \$459 worth of monetary assessments but credited him \$80 toward his fines due to his 357 days of presentence custody, thus resulting in total assessments owed of \$379.

¶ 5 Defendant filed an unsuccessful motion to reconsider sentence, arguing his sentence was excessive, but did not contest the monetary assessments imposed against him. This appeal followed.

¶ 6 Defendant contends several monetary assessments imposed against him by the trial court are actually fines, and therefore, he argues he should receive presentence custody credit toward them. The eight assessments at issue are his: \$50 court system assessment (55 ILCS 5/5-1101(c) (West 2012)), \$15 State Police operations assessment (705 ILCS 105/27.3a(1.5) (West 2012)), \$2 State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2012)), \$2 Public Defender records automation assessment (55 ILCS 5/3-4012 (West 2012)), \$190 felony complaint filing assessment (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), \$15 clerk automation assessment (705 ILCS 105/27.3a(1) (West 2012)), \$15 clerk document storage assessment (705 ILCS 105/27.3c (West 2012)) and \$25 court services sheriff assessment (55 ILCS 5/5-1103 (West 2012)).

¶ 7 Although defendant failed to raise the propriety of these assessments in the trial court, he argues that unauthorized assessments are void and can be challenged at anytime. However, in light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, the void-sentencing rule no longer applies. Nevertheless, a reviewing court may modify a fines and fees order without remand. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) ("On appeal the reviewing court may *** modify the judgment or order from which the appeal is taken."); see *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68 (ordering clerk of the circuit court to correct fines and fees order without remand). We review the propriety of a trial court's imposition of fines and fees *de novo*. *Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 8 A defendant is entitled to a \$5 credit for each day incarcerated prior to sentencing toward the fines levied against him. 725 ILCS 5/110-14(a) (West 2012); see *People v. Johnson*, 2011 IL

111817, ¶ 8 (presentence custody credit only applies to fines, not any other fees or costs). Fines and fees are distinguished based upon their purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee is an assessment intended to " 'recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). In contrast, a fine is punitive, " 'a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.' " *Id.* (quoting *Jones*, 223 Ill. 2d at 581). Although an assessment may be statutorily labeled as a "fee," it nevertheless may still be a "fine," despite the language used by our legislature. *Id.* While the legislature's language "is strong evidence" of its intent, "it cannot overcome the actual attributes of the charge at issue." *Jones*, 223 Ill. 2d at 599.

¶ 9 Defendant first argues, and the State concedes, that his \$50 court system assessment (55 ILCS 5/5-1101(c) (West 2012)) and \$15 State Police operations assessment (705 ILCS 105/27.3a(1.5) (West 2012)) are both fines. We agree.

¶ 10 Despite their statutory label as fees, the court system assessment and State Police operations assessment are both fines because they are not intended to compensate the state for the costs of prosecuting the defendant. See *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 17-21 (court system assessment is a fine); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police operations assessment is a fine). Therefore, defendant must receive \$5 per day of presentence custody credit toward these fines, resulting in a credit of \$65.

¶ 11 Defendant next argues that his \$2 State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2012)), \$2 Public Defender records automation assessment (55 ILCS

5/3-4012 (West 2012)), \$190 felony complaint filing assessment (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), \$15 clerk automation assessment (705 ILCS 105/27.3a(1) (West 2012)), \$15 clerk document storage assessment (705 ILCS 105/27.3c (West 2012)) and \$25 court services sheriff assessment (55 ILCS 5/5-1103 (West 2012)) are also fines. He asserts their purpose is not to compensate the state for the costs of prosecuting a particular defendant, but rather intended to recoup expenses to the clerk and court system as a whole. We disagree and find our prior case law has determined all six of the foregoing assessments to be fees.

¶ 12 In *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65, this court held the State's Attorney records automation assessment and the Public Defender records automation assessment are both fees because they intend to reimburse the state for expenses related to automated record-keeping systems.

¶ 13 Defendant acknowledges the holding of *Bowen*, but asserts that it relied on *People v. Rogers*, 2014 IL App (4th) 121088, which he argues was incorrectly decided. We, however, decline to depart from the well-reasoned analysis of either *Bowen* or *Rogers*. See also *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (agreeing with *Bowen's* analysis concerning the Public Defender records automation assessment being a fee).

¶ 14 Additionally, defendant asserts that in *People v. Breeden*, 2014 IL App (4th) 121049, ¶¶ 134-38 (Appleton, P.J., concurring in part and dissenting in part), *vacated in light of People v. Castleberry*, 2015 IL 116916, the dissent found that the State's Attorney records automation assessment should be considered a fine because it does not seek to compensate the state for the cost of prosecuting a particular defendant, but rather is intended to help finance the technological

aspects of the State's Attorney's office. We acknowledge Fourth District Presiding Justice Appleton's dissent in *Breeden*, but we similarly decline to depart from either *Bowen* or *Rogers*. Therefore, defendant is not entitled to presentence custody credit toward the State's Attorney records automation fee or the Public Defender records automation fee.

¶ 15 In *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that the felony complaint filing assessment, clerk automation assessment, clerk document storage assessment and court services sheriff assessment are all fees. The court reasoned that the four assessments are compensatory in nature and merely a collateral consequence of the defendant's conviction. *Id.*

¶ 16 Defendant acknowledges the holding of *Tolliver*, but asserts that *Tolliver* predates *Graves*, and thus *Tolliver*'s analysis is incorrect. However, cases following *Graves* have recognized the assessments at issue as fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (recognizing felony complaint filing assessment, clerk automation assessment, clerk document storage assessment and court services sheriff assessment as fees); *Smith*, 2013 IL App (2d) 120691, ¶ 21 (various assessments related to the charges filed against the defendant and court services as discussed in *Tolliver* bore an inherent relationship to "the actual expenses involved in prosecuting the defendant" and thus were not fines); *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 28-38 (recognizing felony complaint filing assessment, clerk automation assessment, clerk document storage assessment and court services sheriff assessment as fees); *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010) (recognizing court services sheriff assessment as a fee).

¶ 17 Additionally, defendant asserts that in *Breeden*, 2014 IL App (4th) 121049, ¶¶ 121-52 (Appleton, P.J., concurring in part and dissenting in part), the dissent found that those four assessments should be considered fines based on the dissent's conclusion they do not compensate the state for the costs of prosecuting a particular defendant but rather are intended to finance the circuit clerk's operations and other components of the court system. We acknowledge Fourth District Presiding Justice Appleton's dissent in *Breeden*, but we decline to depart from the holding of *Tolliver*. Therefore, defendant is not entitled to presentence custody credit toward the felony complaint filing fee, clerk automation fee, clerk document storage fee or court services sheriff fee.

¶ 18 Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999) and our ability to correct a fines and fees order without remand (see *Bowen*, 2015 IL App (1st) 132046, ¶ 68), we order the clerk of the circuit court to award defendant presentence custody credit toward his \$50 court system fine and \$15 State Police operations fine, resulting in a credit of \$65. We, however, affirm the imposition of defendant's \$2 State's Attorney records automation fee, \$2 Public Defender records automation fee, \$190 felony complaint filing fee, \$15 clerk automation fee, \$15 clerk document storage fee and \$25 court services sheriff fee, because as fees, they are not subject to presentence custody credit. See 725 ILCS 5/110-14(a) (West 2012); *Johnson*, 2011 IL 111817, ¶ 8.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 20 Affirmed; fines and fees order corrected.