

SIXTH DIVISION  
July 29, 2016

No. 1-14-2604

**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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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	12 CR 20137
	)	
ORLANDO PARKER,	)	Honorable
	)	Sharon Sullivan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice Delort concurred in the judgment.

**ORDER**

*Held:* The trial court's order assessing fines, fees, and costs corrected to reflect total amount due. Trial court's fines and fees order corrected to vacate one inapplicable fee and to reflect the offset of certain fines against presentence incarceration credit.

¶ 1 Following a physical altercation with James Gates where defendant Orlando Parker punched Gates several times rendering him unconscious, defendant was charged by indictment with attempt first-degree murder and two counts of aggravated battery. After a bench trial, defendant was acquitted of attempt first-degree murder, but found guilty of aggravated battery.

¶ 2 The trial court sentenced defendant to 56 months in the Illinois Department of Corrections, with credit for 560 days spent in pretrial custody. The trial court also ordered defendant to pay various fines, fees, and costs. Following the denial of his motion to reconsider sentence, the defendant filed a timely notice of appeal.

¶ 3 In the instant appeal defendant does not raise any issues relating to his conviction or sentence. Rather, he raises claims of error regarding the imposed fines, fees, and costs.

¶ 4 ANALYSIS

¶ 5 "The propriety of a trial court's imposition of fines and fees raises a question of statutory interpretation, which we review *de novo*." *People v. Price*, 375 Ill. App. 3d 684, 697 (2007). "The primary objective of statutory interpretation is to determine and give effect to the legislature's intent." *People v. Jones*, 214 Ill. 2d 187, 193 (2005). "The most reliable indicator of legislative intent is the language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or other condition." *People v. Davis*, 199 Ill. 2d 130, 135 (2002). "We construe statutes as a whole, so that no part is rendered meaningless or superfluous." *People v. Jones*, 223 Ill. 2d 569, 581 (2006).

¶ 6 As an initial matter, defendant argues, the State concedes, and we agree that the trial court's order assessing fines, fees, and costs was incorrectly calculated and should be corrected to reflect a total amount due of \$419, rather than the assessed amount of \$666.

¶ 7 Defendant next asks that we apply the \$5 *per diem* presentence incarceration credit found in section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010), to reduce and offset the various fines imposed upon him by the trial court. This section of the Code provides that:

"Any person incarcerated on aailable 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).

¶ 8 The plain language of this statute indicates that the presentence incarceration credit applies to offset fines, not fees. *Jones*, 223 Ill. 2d at 580; *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Therefore, whether defendant is entitled to have the presentence incarceration credit applied to reduce or offset the various charges imposed upon him by the trial court depends upon whether the particular charge constitutes a "fine" or a "fee." See *Jones*, 223 Ill. 2d at 580.

¶ 9 A fine is a pecuniary punishment imposed as part of a criminal sentence. *Id.*, at 581. Unlike a fine, which is punitive in nature, a fee is not pecuniary and seeks only to reimburse the State for expenses incurred for prosecuting a particular defendant. *People v. Graves*, 235 Ill. 2d 244, 250 (2009); *Tolliver*, 363 Ill. App. 3d at 97 ("a 'fee' is a charge for labor or services, and is a collateral consequence of the conviction which is not punitive, but instead, compensatory in nature"). The central characteristic that separates a fee from a fine is that a fee is intended to reimburse the state for a cost incurred in the defendant's prosecution. *Jones*, 223 Ill.2d at 600; *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63.

¶ 10 The State concedes and we agree that the \$5 electronic citation fee the court imposed pursuant to section 27.3e of the Clerks of Court Act (705 ILCS 105/27.3e (West 2008)) should be vacated as a matter of law. Section 27.3e calls for the payment of \$5 electronic citation fee by defendants "in any traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2008). Defendant's felony conviction for aggravated battery is not one of the offenses enumerated in section 27.3e. Accordingly, we vacate the \$5 electronic citation fee.

¶ 11 The State also concedes and we agree that the \$30 Children's Advocacy Center charge imposed pursuant to section 5-1101(f-5) of the Counties Code (55 ILCS 5/5-1101(f-5) (West 2010)) and the \$5 Drug Court charge imposed pursuant to section 5-1101(f) of the Counties Code (55 ILCS 5/5-1101(f) (West 2010)) are fines subject to the presentence incarceration credit.

¶ 12 The first two charges defendant challenges as being fines rather than fees are the \$15 automated record keeping fee imposed pursuant to section 27.3a(1) of the Clerks of Court Act (705 ILCS 105/27.3a(1) (West 2010)), and the \$15 document storage system fee imposed pursuant to section 27.3c of the Clerks of Court Act (705 ILCS 105/27.3c (West 2010)). Our court has previously considered such challenges and has determined that both of these charges constitute fees, not fines. See *Tolliver*, 363 Ill. App. 3d at 97. The defendant has not presented us with any convincing reason why we should depart from that holding.

¶ 13 The third and fourth charges defendant challenges as being fines rather than fees are the \$2 Public Defender records automation fee imposed pursuant to section 3-4012 of the Counties Code (55 ILCS 5/3-4012 (West 2012)) and the \$2 State's Attorney records automation fee imposed pursuant to section 4-2002.1(c) of the Counties Code (55 ILCS 5/4-2002.1(c) (West 2012)). Again, our court has previously considered and rejected these arguments, holding that

both of these charges constitute fees rather than fines. See *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65. We see no reason to depart from that holding.

¶ 14 Next, defendant contends, and we agree, that he is entitled to presentence incarceration credit towards the \$50 court system fee imposed pursuant to section 5-1101(c) of the Counties Code (55 ILCS 5/5-1101(c) (West 2012)). See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21; *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17; and *People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶ 25-30. The State acknowledges these decisions but asserts they were wrongly decided and should not be followed. Despite the State's urgings, we find no basis to depart from these decisions. See *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22. In line with *Smith*, *Wynn*, and *Ackerman*, we hold that the \$50 court system fee imposed in this case is a fine for which defendant can receive credit for the days he spent in presentence custody.

¶ 15 Finally, we reject defendant's contention that he is entitled to use his presentence incarceration credit to offset the \$10 probation and court services fee imposed pursuant to section 27.3a(1.1) of the Clerks of Court Act (705 ILCS 105/27.3a(1.1) (West 2012)). Defendant acknowledges the holding in *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 37-38, where the reviewing court discussed the compensatory nature of probationary charges and held that when a probation officer is involved in a defendant's prosecution, this charge constitutes a fee.

¶ 16 In this case, the probation department was utilized to prepare a presentence investigation report for the defendant which the trial court considered during his sentencing. Thus, this assessment is reimbursing the State for charges incurred in defendant's prosecution. We decline to depart from the holding in *Rogers* and find that the \$10 probation and court services charge is a fee which may not be offset by presentence incarceration credit.

¶ 17 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 (*Bowen*, 2015 IL App (1st) 132046, ¶ 68), we order the clerk of the court to correct the trial court's order assessing fines, fees, and costs to reflect a total amount due of \$419, rather than the assessed amount of \$666. From that sum we vacate the \$5 electronic citation fee; and award defendant \$5 per day of presentence incarceration credit toward his \$30 Children's Advocacy Center fine, the \$5 Drug Court fine, and the \$50 court system fine.

¶ 18 We affirm the imposition of the \$15 automated record keeping fee, the \$15 document storage system fee, the \$2 Public Defender records automation fee, the \$2 State's Attorney records automation fee, and the \$10 probation and court services fee. We find these fees are not subject to presentence incarceration credit.

¶ 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.