

No. 1-14-3785

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 18679
)	
EPHRIAM GREEN,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justice Neville concurred in the judgment.
Justice Mason concurred in part and dissented in part.

O R D E R

¶ 1 *Held:* We vacate one improperly-assessed fee and correct the fines and fees order.

¶ 2 Following a bench trial, defendant Ephriam Green was convicted of delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)) and sentenced to seven years and six months in prison, and assessed fines and fees in the amount of \$1499. On appeal, he argues his fines and fees order should be corrected. We vacate one improperly-assessed fee and correct the fines and fees order.

¶ 3 Defendant and three codefendants were charged with delivery of a controlled substance stemming from a controlled narcotics purchase by a Chicago police officer on September 3, 2013 in Chicago. At trial, three Chicago police officers testified and established that, on September 3, 2013, defendant and a group of individuals sold two small bags of suspect cocaine to an undercover officer in exchange for two \$10 bills of prerecorded "1505" funds in the vicinity of 2300 West Warren Street. The parties stipulated that analysis of one bag received by the officer tested positive for 0.1 grams of cocaine, and the total weight of the two items was 0.2 grams.

¶ 4 The trial court found defendant guilty of one count of delivery of a controlled substance and sentenced defendant to seven years and six months in prison. It also assessed fines and fees in the amount of \$1499. Defendant filed a timely notice of appeal.

¶ 5 On appeal, defendant argues that one assessed fee should be vacated and several other fees imposed are actually fines, subject to presentence incarceration credit. Defendant did not raise this challenge in the trial court. However, we may modify a fines and fees order without remand per Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999) and therefore need not consider defendant's argument regarding plain error and ineffective assistance of counsel. We review *de novo* the propriety of the trial court's imposition of fines and fees. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 6 Defendant first argues, and the State correctly concedes, that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) should be vacated. This fee is only imposed on a defendant "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." See 705 ILCS 105/27.3e (West 2014). Here, defendant was convicted of felony delivery of a controlled substance, an offense not enumerated in the statute.

See 705 ILCS 105/27.3e (West 2014). Accordingly, we vacate this \$5 fee. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115.

¶ 7 Defendant next argues that several of the fees imposed against him are actually fines subject to presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("the credit for presentence incarceration can only reduce fines, not fees"). A defendant incarcerated on a bailable offense who does not post bail and against whom a fine is imposed is allowed a \$5 credit for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014).

¶ 8 Defendant contends, and the State correctly concedes, the \$15 State Police Operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) is a fine and thus, subject to presentence credit. We agree this assessment is a fine subject to presentence credit. See *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140-41 ([s]ince the state operations charge *** is a fine, defendant is entitled to presentence credit toward it"); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31.

¶ 9 Defendant argues the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)) is a fine because its stated purpose is to finance the court system. See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21. The State again concedes defendant's presentence incarceration credit should apply to this assessment. We agree with the parties and find this charge is a fine subject to presentence incarceration credit. *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 ("we hold that the \$50 Court System fee imposed *** is a fine for which defendant can receive credit for the *** days he spent in presentence custody").

¶ 10 Defendant next argues the \$15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), and the \$25 court services fee (55 ILCS 5/5-1103 (West 2014)) are fines subject to presentence incarceration

credit. This court has already considered challenges to these assessments and found they are fees, not fines. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006).

¶ 11 Defendant contends that *Tolliver* was decided before our supreme court's decision in *People v. Graves*, 235 Ill. 2d 244 (2009), and its analysis is contrary to that of our supreme court and therefore not persuasive. We disagree. *Graves* held that, for a charge to be called a fee, it must reimburse the State for costs incurred in prosecuting the defendant. *Graves*, 235 Ill. 2d at 250. We employed the same reasoning in *Tolliver*, that the charges are fees as they do represent a part of the costs incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 ("[w]e find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered 'fees' rather than 'fines' "). Thus, we hold that these assessments are fees not subject to presentence incarceration credit.

¶ 12 Defendant finally contends the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) should be offset by his presentence incarceration credit. The State argues this charge is a fee and not subject to presentence credit. We agree with defendant that this charge is a fine and not a fee. *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56; *contra Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding the \$2 State's Attorney automation assessment to be a fee); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 16 (same).

¶ 13 For the reasons set forth above, we vacate the \$5 electronic citation fee, and we find the \$15 State Police Operations charge, the \$50 court system fee, and the \$2 State's Attorney records automation assessment are fines subject to offset by presentence incarceration credit. However, the \$15 automation fee, the \$15 document storage fee, and the \$25 court services fee are fees and cannot be offset by presentence incarceration credit. Pursuant to Illinois Supreme Court Rule

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615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the fines and fees order accordingly.

¶ 14 Affirmed as modified.

¶ 15 JUSTICE MASON, concurring in part and dissenting in part:

¶ 16 With the exception of the majority's finding regarding the State's Attorney records automation fee, I concur in the result in this case. I have previously concluded that the \$2 State's Attorney records automation fee is not a fine and, therefore, I respectfully dissent from the majority's contrary determination. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 29; see also, *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 63-65.