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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-3271
)	
ERIC O. STEWARD, JR.,)	Honorable
)	Joseph G. McGraw,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court did not abuse its discretion in resentencing defendant to 10 years' imprisonment on aggravated-discharge-of-a-firearm conviction where sentence fell within the middle of the non-extended-term range for the offense and the record establishes that the trial court addressed the relevant mitigating factors; (2) DNA-analysis fee would be vacated as defendant had previously supplied a DNA sample; and (3) clerk of the circuit court would be ordered to offset certain creditable fines against the *per diem* credit earned while defendant was in pre-sentence custody.

¶ 2 I. INTRODUCTION

¶ 3 Following a jury trial in the circuit court of Winnebago County, defendant, Eric O. Steward, Jr., was convicted of aggravated discharge of a firearm (720 ILCS 5/24-1.2 (West

2010)) and mob action (720 ILCS 5/25-1 (West 2010)). The trial court sentenced defendant to concurrent sentences of 10 years' imprisonment on the aggravated-discharge-of-a-firearm conviction and 6 years' imprisonment on the mob-action conviction. The court also credited defendant \$1,650 for 330 days of presentence incarceration and imposed various court costs, fines, and fees. On direct appeal, this court affirmed defendant's convictions, but vacated his sentence for aggravated discharge of a firearm and remanded the matter for resentencing. *People v. Steward*, 2013 IL App (2d) 120415-U, ¶¶ 25-29, 32. We also directed the trial court to determine whether defendant was entitled to a credit against certain fines and fees and whether others were properly imposed. *Steward*, 2013 IL App (2d) 120415-U, ¶¶ 30, 32.

¶ 4 Upon remand, the trial court held a new sentencing hearing. Following that hearing, the trial court resentenced defendant to 10 years' imprisonment on the aggravated-discharge-of-a-firearm conviction. Although the trial court addressed the propriety of some of the fines and fees in open court, no written order to that effect was entered. Defendant again appeals, raising two issues. First, he argues that his sentence must be reduced because the trial court's comments at resentencing establish that it refused to consider certain mitigating evidence. Second, defendant argues that he is entitled to a credit against various fees and fines and that others were improperly imposed. For the reasons set forth below, we affirm defendant's sentence, vacate one of the fees imposed, and direct the clerk of the circuit court to award defendant credit against certain other monetary assessments.

¶ 5

II. BACKGROUND

¶ 6 The following facts are taken from the record as well as our order on defendant's direct appeal. *Steward*, 2013 IL App (2d) 120415-U. Defendant was tried before a jury along with a co-defendant, Alex Perry, on four counts of a twelve-count indictment filed on November 18,

2010. In the counts at issue, the State alleged that defendant had committed aggravated discharge of a firearm, mob action, and felony murder based on each of those underlying felonies.

¶ 7 The charges stemmed from a series of events occurring during the early morning of September 18, 2010, which resulted in the death of defendant's brother, Dewaun Bryant. On that date, Calvin Graves was staying at his aunt's house at 1128 Blaisdell in Rockford. At about 2:30 a.m., he and an individual named Chris walked in an easterly direction toward 1118 Blaisdell, where they encountered a group of people. The group of people was drinking, and Graves asked if he could contribute some money and have something to drink. Words were exchanged, and defendant, Perry, and Bryant jumped Graves and pistol whipped him.

¶ 8 What happened next is in dispute. The State's version, based largely on Graves' testimony, is that during the altercation, Bryant dropped his gun. Graves picked it up. The group backed off from Graves. Defendant fired a shot at Graves, and Graves fired back. Graves then jogged backwards in the direction of his aunt's house. The group of three ran to their car and pursued Graves down the street. There was an exchange of gunfire. After Graves ran out of bullets, he darted through a gangway and went to another house.

¶ 9 Defendant's version differs. According to defendant, based on witnesses testifying on his behalf, after the altercation between Graves and the group of three, Graves returned to his aunt's house. As he departed, Graves stated, "[t]hat's what you guys own." While at his aunt's house, Graves apparently procured a gun. About five to ten minutes later, defendant, Perry, and Bryant got in a car to leave. As the car backed out of the driveway, a shot was fired towards the right side of the car (from the direction of Graves' aunt's house). Defendant continued to back out

and proceeded toward Grave's aunt's house. As the car traveled west on Blaisdell, there was an exchange of gunfire. The car then swerved and struck a fire hydrant.

¶ 10 After the car crashed, defendant drove to Rockford Memorial Hospital. During the course of events, Bryant had been shot in the head. The gunshot entered the right side of Bryant's head between his ear and eyebrow and exited above his left ear. Bryant died as a result of the wound. A forensic pathologist testified that, more likely than not, the wound would have rendered Bryant unconscious immediately.

¶ 11 The police recovered three shell casings from the front porch of Graves' aunt's house, three shell casings from inside the car, and seven shell casings on Blaisdell, west of Graves' aunt's house. A firearm and tool-mark expert testified that the shell casings found in the car and on the roadway were fired from the same weapon. Those found on the porch, however, were fired from a different gun.

¶ 12 Based on the foregoing evidence, the jury convicted defendant of aggravated discharge of a firearm (720 ILCS 5/24-1.2 (West 2010)) and mob action (720 ILCS 5/25-1 (West 2010)). The jury acquitted defendant of the felony murder counts.

¶ 13 A sentencing hearing was held on February 1, 2012, at which the parties presented evidence and argued the statutory factors in aggravation and mitigation. Ultimately, the trial court sentenced defendant to concurrent sentences of 10 years' imprisonment on the aggravated-discharge-of-a-firearm conviction and 6 years' imprisonment on the mob-action conviction. In addition, the court levied statutory fines and costs, "including a DNA test if it hasn't been done already." See 730 ILCS 5/5-4-3 (West 2010). The court also found that defendant had spent 330 days in presentence custody and therefore was entitled to a *per diem* credit of \$1,650, which would be used to offset any creditable fines. See 725 ILCS 5/110-14(a) (West 2010) (providing

that any person who is incarcerated on a bailable offense and does not post bail is entitled to a credit of \$5 for each day spent in presentence custody against his fines, not to exceed the amount of the fines).

¶ 14 In imposing sentence, the trial court stated that it had considered, *inter alia*, the evidence received at trial, the presentence report, and the evidence offered by the parties at the sentencing hearing. The court further stated that it had assessed “each and every one of the factors in aggravation and mitigation that are applicable.” The court then commented on some of the factors in mitigation. For instance, citing the fact that defendant produced a gun during the attack, the court rejected the notion that defendant’s criminal conduct “neither caused nor threatened serious physical harm.” See 730 ILCS 5/5-5-3.1(a)(1) (West 2010)). Likewise, the court found that defendant could not have contemplated that no serious harm would be threatened to another where he used the gun to beat Graves. See 730 ILCS 5/5-5-3.1(a)(2) (West 2010). The court also determined that defendant did not act under strong provocation since he and his companions initiated the contact with Graves “for no good reason.” See 730 ILCS 5/5-5-3.1(a)(3) (West 2010). Next, the court concluded that there were no substantial grounds that would mitigate or excuse defendant’s conduct, though falling short of establishing a defense. See 730 ILCS 5/5-5-3.1(a)(4) (West 2010)). In this regard, the court explained that “the jury could have believed, obviously did believe Calvin Graves’ testimony” and found that defendant shot at Graves as he “attempted to create some distance between himself and those beating him.” The Court also concluded that defendant’s criminal conduct was not induced or facilitated by another. See 730 ILCS 5/5-5-3.1(a)(5) (West 2010). The Court then cited defendant’s prior criminal history. See 730 ILCS 5/5-5-3.1(a)(7) (West 2010). The court noted that defendant had previously been placed on probation twice and that, according to the probation officer, defendant

was not “successful.” The court remarked that it was not sentencing defendant for Bryant’s death as the jury had acquitted him of that charge. Noting, however, that defendant was a convicted felon and therefore “had no business having a gun in the first place,” the court found that defendant’s conduct caused the events that followed the initial assault upon Graves.

¶ 15 Thereafter, defendant filed a motion to reconsider sentence. In the motion, defendant asserted, *inter alia*, that the sentence for aggravated discharge of a firearm was excessive “in light of the nature and circumstances of the offense and [his] history and character.” In support of his argument, defendant asserted that Graves’ testimony was “unreliable regarding the sentencing factors of aggravation and mitigation.” Defendant further maintained that “the finding in sentencing *** that [he] fired a gun at Calvin Graves at or about the time of the mob action is contrary to the jury verdicts of not guilty of felony murder.” Defendant added that this finding was based solely on the testimony of Graves and that Graves’ version of the events “was contradicted by every other occurrence witness, expert witness and physical evidence and is not reliable for sentencing purpose[s].”

¶ 16 At the hearing on the motion, defense counsel reiterated that several statutory factors in mitigation were present that should have been considered by the court. In particular, defense counsel emphasized his belief that: (1) defendant acted under a strong provocation; (2) there were substantial grounds tending to excuse or justify defendant’s conduct, though failing to establish a defense; and (3) defendant’s conduct was induced or facilitated by another. According to counsel, the court improperly imposed a 10-year sentence “for somebody that discharged a weapon at somebody else in response to his brother getting shot, the car getting hit, them trying to leave the scene and then discharging after the fact.”

¶ 17 The trial court denied defendant's motion to reconsider, commenting, in relevant part, as follows:

“[T]his *** is a case that had divergent viewpoints; and there was a factual dispute. And the jury had to listen to all of the evidence and to consider the physical evidence *** as well as the testimonial evidence; and, in so doing, they *** found [defendant] guilty of the offenses for which he's been sentenced.

I do not find that the sentences are inconsistent with the verdicts, the defendant's record or the facts as presented at trial. *** [T]he interpretation of the facts that you are urging on the Court was essentially presented to the jury and was rejected by the jury or given less weight or they were unpersuaded.

Accordingly, I don't think that the only conclusion we can reach is that [defendant] only fired his firearm, you know, in a defensive manner after being shot at by Calvin Graves. Calvin Graves claims that he was being shot at while he was retreating from the confrontation outside the house. There are competing versions of the events.

And the jury was persuaded that [defendant] was guilty of the aggravated discharge of a firearm in the direction of Calvin Graves. And I don't think I'm constrained to conclude that it was only after *** [defendant] was shot at and his brother was killed that he returned fire as you seem to be suggesting today, and the jury wasn't persuaded by that version.”

¶ 18 Defendant filed a notice of appeal. On appeal, defendant argued: (1) the State failed to prove beyond a reasonable doubt that his use of force against Graves was not justified; (2) the State improperly bolstered Graves' credibility by alluding to certain prior consistent statements during the rebuttal portion of its closing argument; (3) the trial court erred during sentencing by

assuming “the existence of aggravating facts that were not supported by the jury’s verdicts;” and (4) he is entitled to a credit against various fines and fees, while others were improperly imposed.

¶ 19 We affirmed defendant’s convictions. *Steward*, 2013 IL App (2d) 120415-U, ¶ 32. Initially, we addressed defendant’s claim that the State failed to prove that the use of force upon which his aggravated-discharge-of-a-firearm conviction was based was not justified. *Steward*, 2013 IL App (2d) 120415-U, ¶¶ 13-17. We pointed out that while the jury could have resolved the competing version of events offered at trial in favor of the State, defendant raised “some legitimate questions regarding such a resolution, most significantly, how Bryant, who was sitting in the passenger seat, could have been shot in the right side of the head as the car proceeded down the street.” *Steward*, 2013 IL App (2d) 120415-U, ¶ 15. Nevertheless, we concluded that even if the jury accepted defendant’s version of events, it would not have been compelled to acquit defendant. *Steward*, 2013 IL App (2d) 120415-U, ¶ 16. We explained that following the shooting, defendant got into a car and drove towards Graves’ location, thereby “escalating the conflict.” *Steward*, 2013 IL App (2d) 120415-U, ¶ 16. Thus, rather than simply defending himself, defendant “sought to carry the battle to Graves.” *Steward*, 2013 IL App (2d) 120415-U, ¶ 16. Under these circumstances, we determined that the jury could have reasonably concluded that defendant’s use of force was not necessary, thereby negating one the elements of a claim of self defense. *Steward*, 2013 IL App (2d) 120415-U, ¶¶ 14, 16-17. For reasons not pertinent here, we also rejected defendant’s claim that the State’s closing argument was unfairly prejudicial. *Steward*, 2013 IL App (2d) 120415-U, ¶¶ 18-24.

¶ 20 Although we affirmed defendant’s convictions, we concluded that defendant was entitled to a new sentencing hearing on his conviction of aggravated discharge of a firearm. *Steward*, 2013 IL App (2d) 120415-U, ¶¶ 25-28, 32. Significantly, we found that the trial court relied

heavily upon the version of events testified to by Graves even though the jury could have reasonably rejected defendant's claim of self defense without crediting Graves. *Steward*, 2013 IL App (2d) 120415-U, ¶ 28. We noted that since the jury returned a general verdict, we did not know which theory of the case they relied on in convicting defendant of aggravated discharge of a firearm. *Steward*, 2013 IL App (2d) 120415-U, ¶ 28. Therefore, we vacated defendant's sentence for aggravated discharge of a firearm and remanded the matter for a new sentencing hearing "as our holding may bear on the issue of provocation by Graves and other relevant sentencing factors." *Steward*, 2013 IL App (2d) 120415-U, ¶ 28. We also instructed the trial court to address on remand whether various fines and fees were either imposed improperly or satisfied by credits to which defendant was entitled. *Steward*, 2013 IL App (2d) 120415-U, ¶ 30.

¶ 21 A resentencing hearing was held on September 15, 2014. At the hearing, defense counsel reiterated his position that, contrary to Graves' version of events, the reliable evidence presented at trial established that Bryant was not shot in the course of the mob action or the aggravated discharge of a firearm. Rather, he was shot as he was sitting in defendant's car in the driveway of the home at 1118 Blaisdell. As such, counsel asserted that there were three factors in mitigation that should have been considered by the court when sentencing defendant on the aggravated-discharge-of-a-firearm conviction: (1) defendant acted under strong provocation; (2) there were substantial grounds tending to excuse or justify defendant's criminal conduct, though failing to establish a defense; and (3) defendant's criminal conduct was induced by someone other than defendant. Defense counsel urged the trial court to impose the minimum sentence—four years' imprisonment—on the aggravated-discharge-of-a-firearm conviction. The State responded that the sentence previously imposed was appropriate, explaining that Graves "was the one that the violence was initiated against, and that continued."

¶ 22 Following the parties' arguments, the court discussed our remand order, commenting:

“[A]s I understand the—understand that the—because the general verdict was returned, the Appellate Court is suggesting that I, as the sentencing judge, couldn't tell or determine whether the jury rejected the defendant's claim of self-defense without crediting Graves's version of what happened. Looking at *** the decision, it says, we deem it prudent to vacate defendant's sentence and remand him for new sentencing hearing [*sic*] as our holding may bear—as our holding may bear on the issue of provocation by Graves and other relevant sentencing factors.

I assumed, based on the jury's verdict, that they credited or believed Graves. And the Appellate Court is saying that, based on the verdict, that I couldn't necessarily conclude that and that there may have been provocation by Graves. Is that the gist of it?”

The parties agreed that was the correct interpretation of our decision. The court then took the matter under advisement for a ruling on the sentence. The parties also discussed the issue of fines and fees. In this regard, the trial court ruled that, to the extent the DNA fee was re-imposed, it would be vacated. In addition, the court stated that \$1,650 in *per diem* credit would be applied toward any creditable fines. No written order was entered addressing the fines and fees.

¶ 23 On October 6, 2014, the court issued its ruling and re-imposed a 10-year sentence for defendant's aggravated-discharge-of-a-firearm conviction. The court explained as follows:

“[T]he Court [originally] sentenced [defendant] to ten years in the department of corrections. The Court adopted what it believed to be certain findings made by the jury as part of—I emphasize ‘as part of’—his [*sic*] rationale in sentencing [defendant] to ten

years in the department of corrections. There were other rationale not commented on by the appellate court which also formed the basis for the Court's sentencing decision.

Specifically, to recapitulate, that the defendant's criminal conduct did cause or threaten serious physical harm. That was a part of the basis for the Court's decision. The Court also concluded that there was no strong provocation justifying [defendant's] actions. The Court also concluded that the defendant's criminal conduct was not induced or facilitated by another.

The Court also relied upon defendant's prior criminal history, that he had a chance to mend his ways and that he continued to violate the law while on probation in 2004, that the defendant was a convicted felon and knew he was not allowed to possess a firearm and he did so in any event, that the mitigating factors were not present in [defendant's] favor. There were not substantial grounds tending to excuse or justify [defendant's] criminal conduct and so forth.

So in reviewing the record and reviewing my notes, notwithstanding the Court's assumption or conclusion that the jury made certain findings, that there are sufficient independent bases for the ten-year sentence on the agg[ravated] discharge. The sentence remains as previously imposed."

The trial court subsequently denied defendant's motion to reconsider sentence. This appeal followed.

¶ 24

III. ANALYSIS

¶ 25 On appeal, defendant raises two discrete issues. First, he argues that his sentence must be reduced because the trial court's remarks at resentencing establish that it again refused to consider mitigating factors that were present. Second, defendant requests that we vacate certain

fees and fines and that we grant him a credit against other fines. We address each contention in turn.

¶ 26

A. Sentencing

¶ 27 Defendant first argues that his sentence must be reduced because the trial court's remarks at resentencing establish that it again relied on and considered as established fact events that were inconsistent with the verdicts entered by the jury, thereby refusing to consider mitigating factors that were present. Defendant contends that the trial court's refusal to consider factors in mitigation rendered the sentence for aggravated discharge of a firearm to be an abuse of discretion and requires that the sentence be reduced to a term closer to the minimum sentence. The State responds that the trial court reconsidered defendant's sentence in light of the mitigation evidence, but concluded that the original sentence was warranted.

¶ 28 The trial court's decision in sentencing is entitled to great deference and weight. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). It is the function of the trial court to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case. *Latona*, 184 Ill. 2d at 272. A reviewing court may not reverse the sentencing court merely because it would have weighed the factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). When a sentence falls within the statutory limits for the offense, it will not be disturbed absent an abuse of discretion. *People v. Fern*, 189 Ill. 2d 48, 55-56 (1999). A trial court abuses its sentencing discretion when the penalty imposed is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 49.

¶ 29 As charged in this case, aggravated discharge of a firearm is classified as a Class 1 felony. 720 ILCS 5/24-1.2(a)(2), (b) (West 2010). The sentencing range for a Class 1 felony is a

determinate sentence of not less than 4 years and not more than 15 years. 730 ILCS 5/5-4.5-30(a) (West 2010). At the sentencing hearing, the State, referencing “the facts of this case, the facts of this defendant’s background,” urged the trial court to impose an extended-term sentence. The sentence for an extended-term Class 1 felony is between 15 and 30 years’ imprisonment. 730 ILCS 5/5-4.5-30(a) (West 2010). The trial court opted not to impose an extended-term, sentencing defendant to a 10-year sentence on the aggravated-discharge-of-a-firearm conviction. Defendant notes that this sentence is more than twice the minimum. While true, we also point out that the 10-year sentence imposed by the trial court fell near the middle of the non-extended-term sentencing range of 4 to 15 years’ imprisonment.

¶ 30 Nevertheless, defendant maintains that the trial court refused to consider any mitigating factors when it resentenced him. Section 5-5-3.1 of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-3.1 (West 2010)) lists various factors that “shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment.” Because the language of section 5-5-3.1 of the Code is mandatory, a sentencing court “ ‘may not refuse to consider relevant evidence presented in mitigation.’ ” *People v. Calhoun*, 404 Ill. App. 3d 362, 386 (2010) (quoting *People v. Heinz*, 391 Ill. App. 3d 854, 865 (2009)); see also *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007) (noting that when determining a proper sentence, a trial court is required to consider all factors in aggravation and mitigation). Where relevant mitigating evidence is presented, we will presume the trial court considered it absent some indication to the contrary other than the sentence itself. *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994).

¶ 31 Among the factors set forth in section 5-5-3.1 of the Code are: (1) the defendant acted under strong provocation; (2) there were substantial grounds tending to excuse or justify the defendant’s conduct, though failing to establish a defense; and (3) the defendant’s criminal

conduct was induced or facilitated by someone other than the defendant. 730 ILCS 5/5-5-3.1(a)(3)-(a)(5) (West 2010). Defendant argues that the trial court failed to consider these mitigating factors when it originally sentenced him and upon resentencing. We disagree. We find that while the trial court may not have weighed these factors the way defendant would have liked, it clearly considered them in imposing sentence.

¶ 32 When the trial court originally sentenced defendant, it stated that it had assessed “each and every one of the factors in aggravation and mitigation that are applicable.” Although the trial court was not required to recite each mitigating factor presented at the sentencing hearing (see *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011)), our review of the record in this case demonstrates that the trial court discussed many applicable mitigating factors. With respect to the three factors referenced in the in the preceding paragraph, the court determined that defendant did not act under strong provocation since he and his companions initiated the contact with Graves “for no good reason.” The court also discussed defendant’s claim that there were substantial grounds tending to excuse or justify defendant’s conduct, though failing to establish a defense. Notably, the court remarked that the jury believed Graves’ testimony and that defendant fired at Graves as he was attempting to flee from his assailants. Additionally, the court rejected the notion that defendant’s criminal conduct was induced or facilitated by another. In resentencing defendant, the trial court recounted its comments at the initial sentencing hearing, including its finding that there was no strong provocation justifying defendant’s actions. Accordingly, contrary to defendant’s assertion, the trial court considered whether defendant acted under strong provocation, whether there were substantial grounds tending to excuse or justify the defendant’s conduct, though failing to establish a defense, and whether defendant’s criminal conduct was induced or facilitated by someone else. The fact that the court disagreed

with defendant regarding the impact of these factors does not signify that the court did not consider them. See *People v. Scott*, 2015 IL App (1st) 131503, ¶ 55 (“The record does not reflect that the trial court refused to consider this mitigating factor, but elected to give it little weight, which, under the circumstances presented here, it was entitled to do.”); *People v. Powell*, 2013 IL App (1st) 111654, ¶ 34 (“Even if the trial court did not weigh or view the factor in the way [the defendant] urges, the record shows that the court considered [the defendant’s] purported remorse.”). Hence, we find that the court did consider the statutory mitigating factors, but determined that they were entitled to little or no weight under the circumstances present.

¶ 33 Defendant further contends that based on the nature of the evidence presented at trial and the jury’s verdicts of acquittal on the felony murder charges, the trial court’s analysis of the mitigating factors and its “continued reliance on a state of events that found no credible support in the evidence, cannot be sustained and demonstrates that [the court] abused [its] discretion in refusing to reduce [defendant’s] sentence.” According to defendant, “[t]he reliable and credible evidence presented in this case disclosed that [he] fired shots in the direction of Calvin Graves only after Graves fired upon [him] and his group and struck and fatally wounded [Bryant].” Defendant posits that witnessing one’s brother getting shot in the head and dying constitutes sufficient provocation to warrant a reduction in his sentence. The record establishes that Graves approached a group of people in front of 1118 Blaisdell. The group was drinking, and Graves asked if he could contribute some money and have something to drink. Words were exchanged, and defendant, Perry, and Bryant jumped Graves and pistol whipped him. As noted above, however, there are competing versions of what happened next. While there was evidence to support the scenario advocated by defendant, there was also evidence that defendant produced a gun during the altercation outside of 1118 Blaisdell and that defendant fired in Graves’ direction

as Graves attempted to extricate himself from the situation. Under this scenario, the shooting of Bryant could not have constituted provocation because it occurred after the events described. Moreover, as the trial court determined, this evidence suggests that defendant and his companions initiated the contact with Graves with no apparent justification.

¶ 34 We also point out that the trial court cited several other factors in support of its decision to impose a sentence near the middle of the applicable sentencing range. The court noted that it had considered evidence from the trial, the presentence report, and the evidence offered by the parties at sentencing. The court also commented on several other factors in mitigation. For instance, noting that defendant produced a gun during the initial altercation, the court rejected the notion that defendant's criminal conduct "neither caused nor threatened serious physical harm." The court also found that defendant could not have contemplated that no serious harm would be threatened to another where he used the gun to beat Graves. Additionally, the court considered defendant's criminal history, noting that he continued to violate the law while on probation and unlawfully possess a firearm despite his status as a convicted felon.

¶ 35 In support of his argument for reversal, defendant also directs us to *Calhoun*, 404 Ill. App. 3d 362. In that case, the defendant was convicted of the kidnaping and murder of Alonzo Jones, a person she believed had sexually assaulted her one-year old daughter. The trial court sentenced the defendant to consecutive sentences of 7 years' imprisonment for kidnaping and the maximum term 60 years' imprisonment for first degree murder. On appeal, the defendant argued that the trial court abused its discretion in sentencing her to the maximum term for murder because the court did not adequately consider the relevant mitigating factor of provocation in that when she committed the crime she believed that Jones had molested her daughter. The reviewing court agreed, finding that the comments of the trial court in imposing the maximum

sentence reflected a failure by the trial court to consider certain mitigating factors, including provocation. *Calhoun*, 404 Ill. App. 3d at 387-89. As a result, the *Calhoun* court remanded the matter for a new sentencing hearing for first degree murder. *Calhoun*, 404 Ill. App. 3d at 391. We find defendant's reliance on *Calhoun* misplaced. Unlike in *Calhoun*, the maximum sentence was not imposed in this case. More importantly, however, the court in this case considered the mitigating factors and provided a cogent explanation as to why they did not result in a sentence closer to the minimum sentencing range. We also question defendant's reliance on *Calhoun* given the supreme court's instruction that a reasoned judgment as to the proper sentence to impose must be based on the particular circumstances of each case. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977).

¶ 36 Prior to concluding, we address one additional point. In his brief, defendant claims that our order on defendant's direct appeal characterizes Graves' version of events as "implausible." See *Steward*, 2013 IL App (2d) 120415-U, ¶¶ 15, 28. We never made such a statement. Rather, we merely noted that there are two competing versions of events and that, *according to defendant*, Graves's version of events was implausible. See *Steward*, 2013 IL App (2d) 120415-U, ¶ 15 ("[D]efendant notes that if Bryant was shot while in the car, he would have had to be facing backwards—an implausible proposition that is further undermined by the locations where blood was found in the car, and if Bryant was shot outside of the car, the nature of his wound and the testimony of the pathologist that the wound would have likely rendered him unconscious, made it implausible that he would have jumped into the car to pursue Graves after being shot.").

¶ 37 In sum, the trial court did not abuse its discretion in sentencing defendant. The court fairly considered all evidence in mitigation and aggravation. The court properly resentenced

defendant to 10 years' imprisonment, which, we note, is near the middle of the applicable sentencing range.

¶ 38

B. Fees and Fines

¶ 39 Next, defendant argues that the trial court improperly imposed various fines and fees and that it failed to offset certain assessments with his presentence incarceration credit. Specifically, defendant asserts that the \$200 DNA-analysis fee and the \$15 State Police fee were improperly assessed. Defendant also maintains that he is entitled to a presentence incarceration credit against the \$10 child-advocacy fee and the \$10 mental-health fee. The State agrees with defendant, and we accept the State's concession, with one exception.

¶ 40 Initially, defendant contends that his \$200 DNA-analysis fee must be vacated because he previously provided a DNA sample. A defendant need only submit to DNA testing and pay the requisite fee once, as an individual's DNA sequence needs to be entered into the Illinois State Police database only once. See *People v. Marshall*, 242 Ill. 2d 285, 297 (2011). In this case, the record shows that defendant had previously supplied a DNA sample in 2004, and, as noted above, the State concedes that the \$200 DNA-analysis fee was improperly assessed. Accordingly, we vacate the DNA-analysis fee ordered in this case. See *People v. Harper*, 387 Ill. App. 3d 240, 244 (2008) (noting that a reviewing court may correct a sentencing judgment at any time without remanding the matter to the trial court).

¶ 41 Defendant also contends that he is entitled to a presentence incarceration credit against the \$10 child-advocacy fee and the \$10 mental-health fee because both of these "fees" are properly categorized as "fines." The statutory label given a monetary assessment is not dispositive as to whether it is a "fee" or a "fine." *People v. Jones*, 223 Ill. 2d 569, 599-600 (2006). As explained by our supreme court, "[b]roadly speaking, a 'fine' is a part of the

punishment for the conviction, whereas a ‘fee’ or a ‘cost’ seeks to recoup expenses incurred by the state—to ‘compensat[e]’ the state for some expenditure incurred in prosecuting the defendant.” *Jones*, 223 Ill. 2d at 582. In other words, a “fee” that is not intended to specifically reimburse the State for costs it has incurred in prosecuting a defendant is actually a “fine.” *Jones*, 223 Ill. 2d at 581. A “fine” may be offset by a presentence incarceration credit. See 725 ILCS 5/110-14 (West 2010); *People v. Winkler*, 77 Ill. App. 3d 35, 36-37 (1979) (“The apparent purpose of section 110-14 is to allow a credit against [a defendant’s] fine for the time he spent in custody prior to posting bond or being released on his own recognizance.”). In this case, defendant was assessed a \$10 mental-health “fee” to be placed in a general fund to finance the mental health court (see 55 ILCS 5/5-1101(d-5) (West 2010)) and a \$10 child-advocacy “fee” to be placed into an account to fund the operation and administration of a children’s advocacy center (see 55 ILCS 5/5-1101(f-5) (West 2010)). Neither of these charges was designed to reimburse the State for money expended to prosecute defendant. As a result, both assessments are “fines” for which presentence incarceration credit is authorized. See *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) (finding the child-advocacy fee to be a fine) and *People v. Graves*, 235 Ill. 2d 244, 248-54 (2009) (determining that the mental-health fee constitutes a fine). These charges total \$20 and defendant is entitled to an offset in that amount against these fines from his presentence incarceration credit.

¶ 42 Finally, defendant contends that the \$15 State Police fee should be vacated because the statute authorizing it (see 705 ILCS 105/27.3a(1.5) (West 2010)) was not in effect at the time of the offenses charged in this case. We disagree. The State Police fee is assessed to be used by the Illinois Department of State Police to “finance any of its lawful purposes or functions.” 705 ILCS 105/27.3a(1.5), (5) (West 2010); 30 ILCS 105/6z-82(b) (West 2010). As such, this

monetary assessment is a “fine” as it does not reimburse the State for money expended to prosecute defendant. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (concluding that the State Police fee is a fine). It is true that that the imposition of a fine that does not become effective until after a defendant commits an offense violates *ex post facto* principles. *People v. Devine*, 2012 IL App (4th) 101028, ¶ 10. However, as defendant notes in his brief, the State Police fee authorized by 705 ILCS 105/27.3(a)(1.5) was enacted as part of Public Act 96-1029, and became effective on July 13, 2010. The offenses of which defendant were convicted occurred on September 18, 2010, more than two months after the effective date of Public Act 96-1029. Thus, contrary to defendant’s argument, the State Police fee was properly imposed as it was in effect at the time of the offenses charged in this case. We note, however, that because the State Police fee is a “fine,” it is subject to the presentence incarceration credit. Accordingly, to the extent that the circuit court clerk has not already done so, defendant is entitled to an offset in the amount of \$15 against this fine from his presentence incarceration credit.

¶ 43

IV. CONCLUSION

¶ 44 In light of the foregoing, we affirm defendant’s sentence for aggravated discharge of a firearm. We also vacate the \$200 DNA-analysis fee, and pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the circuit court clerk to correct the order imposing the \$10 child-advocacy fee, \$10 mental-health fee, and \$15 State Police fee to reflect that these assessments are offset by defendant’s presentence incarceration credit. As part of our judgment, we grant the State’s request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 45 Affirmed in part and vacated in part; cause remanded to the clerk of the circuit court to correct the fines and fees order.