2017 IL App (1st) 142938-U

FIRST DIVISION
January 30, 2017

No. 1-14-2938

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 5614
	)	
TONY RIDGEWAY,	)	Honorable
	)	Jorge Alonso,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

O R D E R

¶ 1 *Held:* Two charges imposed against defendant as part of his sentence were erroneously assessed and a portion of his presentence custody credit is applied to two fines, thus reducing defendant's total amount of fines and fees owed.

¶ 2 Following a jury trial in 2014, defendant Tony Ridgeway was convicted of burglary. Based upon defendant's criminal history, the circuit court sentenced him as a Class X offender to 10 years in prison. The court also assessed various fines and fees against him that are the sole

subject of this appeal. On appeal, defendant contends that the $5 electronic citation fee and a $20 Violent Crime Victims Assistance (VCVA) assessment were erroneously imposed in this case. He also asserts that two charges assessed against him violate *ex post facto* principles and that a portion of his monetary credit for time spent in custody should apply to several other assessments that he contends are fines. For the reasons stated below, we order that the fines and fees order in this case be corrected.

¶ 3 At defendant's trial in 2014, the State presented evidence that on March 7, 2012, defendant was arrested for burglary, a Class 2 felony, after he was found in a Chicago parking garage in possession of items he had taken from cars. The trial court sentenced defendant to 10 years in prison after finding he was eligible to be sentenced as a Class X offender. The mittimus reflects that defendant should receive credit for 904 days spent in custody prior to his sentencing. Defendant was assessed $459 in fines and fees.

¶ 4 On appeal, this court reviews *de novo* the propriety of the circuit court's imposition of fines and fees, as it raises issues of statutory interpretation. See *People v. Green*, 2016 IL App (1st) 134011, ¶ 44. Although defendant did not raise a challenge to his fines and fees in the circuit court, he contends we can reach this issue under the plain error doctrine or as a claim of the ineffectiveness of his trial counsel. This court has recognized that a sentencing error may affect defendant's substantial rights and therefore can be reviewed under the plain error rule. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 20. Moreover, we may review these charges and, if necessary, modify the circuit court's order without remanding the case, pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 5 Defendant first asserts, and the State agrees, that two charges were erroneously imposed against him: the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) and the $20 assessment payable to the VCVA Fund (725 ILCS 240/10(c) (West 2010)). The statute setting out the $5 electronic citation fee specifies that charge only applies to a defendant in "any traffic, misdemeanor, municipal ordinance or conservation case." 705 ILCS 105/27.3e (West 2012). Here, defendant was convicted of a Class 2 felony. See 720 ILCS 5/19-1(b) (West 2012) (burglary is generally a Class 2 felony, unless committed under circumstances not present here). Therefore, that charge was improperly assessed. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 40.

¶ 6 As to the assessment payable to the VCVA Fund, defendant contends that charge should not be imposed in this case because, according to the relevant statute as it read at the time of defendant's offense, the fine can be assessed only where "no other fine is imposed." 725 ILCS 240/10(c) (West 2010). Because, as set out below, other charges were assessed in this case that constitute fines, we agree with defendant, and the State also concedes, that the VCVA charge was incorrectly assessed. Accordingly, the VCVA charge and the electronic citation fee, which together total $25, are vacated.

¶ 7 Defendant's remaining contentions involve the application of presentence custody credit to several other monetary assessments that were imposed against him. A defendant is entitled to a credit of $5 for each day that he is incarcerated, with that amount to be credited toward the fines assessed against him as part of his conviction. 725 ILCS 5/100-14(a) (West 2012). Here, defendant spent 904 days in custody prior to his trial and accordingly, he has accumulated $4,520 worth of credit toward his eligible fees and fines. Defendant was assessed $459 in fines

and fees, and we have vacated $25 of those charges above. We next consider how much of defendant's presentence custody credit can be applied to the remaining $434 owed by defendant.

¶ 8 Before considering the individual charges that defendant challenges, we note that the credit allowed by section 100-14(a) can only be applied toward "fines." Accordingly, we set out the difference between a "fine" and a "fee."

¶ 9 A fine is "punitive in nature" and is "a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense." (Internal quotations omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009), citing *People v. Jones*, 223 Ill. 2d 569, 581 (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). A "fee" is defined as "a charge that seeks to recoup expenses incurred by the state or compensate the state for some expenditure incurred in prosecuting the defendant." (Internal quotations omitted.) *Graves*, 235 Ill. 2d at 250, citing *Jones*, 223 Ill. 2d at 582. "A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution." *Jones*, 223 Ill. 2d at 600. The labeling of a charge as a "fee" or a "fine" by the legislature is not dispositive, and the "most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *Graves*, 235 Ill. 2d at 250-51, citing *Jones*, 223 Ill. 2d at 600 (other factors include whether the charge is only imposed after a conviction and to whom the payment is made).

¶ 10 In this case, defendant argues, and the State correctly concedes, that two of the assessments that he challenges are labeled by the legislature as "fees" but have been found to be fines and are thus subject to presentence custody credit: a $15 State Police operations fee (705 ILCS 105/27.3a (1.5) (West 2012)) and a $50 Court System fee (55 ILCS 5/5-1101(c)(1) (West 2012)). See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 147 (State Police operations

charge is a fine); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (Court System charge is a fine). The Court System assessment was found to be a fine because it was imposed upon the conviction of every defendant who was found guilty of a felony, regardless of what transpired in the particular case, and because it did not compensate the State for prosecuting that defendant. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17. See also *Graves*, 235 Ill. 2d at 253 (costs assessed under section 5-1101 of the Counties Code are "monetary penalties to be paid by a defendant" upon a judgment of guilty). Because those two charges are fines, defendant is entitled to have those charges, which total $65, offset by a portion of his presentence custody credit.

¶ 11 Defendant next asserts that this credit should be applied to the $2 State's Attorney and $2 Public Defender records automation charges. The statute enacting the State's Attorney records automation charge indicates that amount is:

> "to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems. *** Expenditures from this fund may be made by the State's Attorney for hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/4-2002.1(c) (West 2014).

¶ 12 The statute authorizing the $2 Public Defender records automation fee uses the same language as quoted above in regard to the Public Defender's office. 55 ILCS 5/3-4012 (West 2014). Both of those statutes took effect several months after defendant committed this offense in March 2012 but before defendant's trial and sentencing in 2014. See 55 ILCS 5/4-2002.1(c), 55 ILCS 5/3-4012 (West 2012) (amended by Pub. Act. 97-673, § 5 (eff. June 1, 2012)).

¶ 13 Defendant contends those charges should be deemed fines, and not fees, because they do not compensate those offices for any automated recordkeeping used in the prosecution of his case or pertaining to any particular defendant. Defendant also argues that as fines, those assessments violate *ex post facto* principles, which prohibit punishments that are greater than the punishment that was in effect when the crime was committed. He points out that these State's Attorney and Public Defender records automation assessments were enacted after he committed these offenses.

¶ 14 We note that several decisions of this court have held those charges are fees, as opposed to fines, and thus are not subject to being offset by defendant's presentence custody credit. See *Warren*, 2016 IL App (4th) 120721-B, ¶ 115 (finding the State's Attorney charge to be a fee because it is compensatory in nature and not punitive); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish between the two statutes" given their nearly identical language and concluding that those charges are intended to reimburse those offices for expenses); see also *People v. Daily*, 2016 IL App (4th) 150588, ¶ 30; *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 144; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17.

¶ 15 Although the opposite result was reached in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 52-56, which found that the charges do not compensate the State for costs imposed in prosecuting any particular defendant and therefore are not fees, we agree with the analysis in *Warren* and the numerous cases cited above that when a charge does not include a punitive aspect, it is a fee, not a fine.

¶ 16 Given our determination that the State's Attorney and Public Defender charges are fees, they do not implicate *ex post facto* principles. See *Bowen*, 2015 IL App (1st) 132046, ¶¶ 63-64,

citing *People v. Dalton*, 406 Ill. App. 3d 158, 163 (2010) (the prohibition against *ex post facto* laws applies only to provisions that are punitive). Therefore, all of defendant's contentions pertaining to those two assessments are rejected.

¶ 17 Defendant's remaining arguments involve three additional charges assessed against him. He contends that the clerk's $15 automation charge (705 ILCS 105/27.3a (1), (1.5) (West 2012)) and the $15 document storage charge (705 ILCS 105/27.3c (a) (West 2012)) constitute fines, not fees, because they do not relate to the costs incurred in his prosecution. Likewise, he asserts that the $25 Court Services (Sheriff) assessment (55 ILCS 5/5-1103 (West 2012)) is a fine because it reimburses the sheriff for costs incurred in providing court services and does not compensate the State for a cost incurred in a particular prosecution.

¶ 18 Similar to the analysis in *Warren*, this court has held in *People v. Tolliver*, 363 Ill. App. 3d 94, 96-97 (2006), that those assessments are fees because they are compensatory and represent a "collateral consequence" of a defendant's conviction. The automation and document storage charges help to fund the maintenance of those systems. *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-30. Similarly, the statute authorizing the Court Services (Sheriff) charge expressly states that charge is assessed to defray court expenses. See 55 ILCS 5/5-1103 (West 2012).

¶ 19 Defendant acknowledges the holdings of *Tolliver* and *Martino* but points out those and additional later cases contain no analysis as to why the document storage charge, for example, should be considered a fee. He also argues that since *Tolliver* was decided, the supreme court clarified in *Graves* that to be designated as a fee, a charge must reimburse the State for a cost that was incurred in the defendant's prosecution. *Graves*, 235 Ill. 2d at 250. However, as stated above, these charges do represent a portion of the overall costs that were incurred in prosecuting

defendant. Furthermore, cases decided since *Graves* have found those three charges to be fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68; *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 25-31; *Martino*, 2012 IL App (2d) 101244, ¶¶ 29-38. The fact that such assessments are not tailored to each defendant's case does not negate that the charges compensate the State in some part for the costs incurred. See *Graves*, 235 Ill. 2d at 250 (a fee recovers the State's costs, *in whole or in any part*, for prosecuting the defendant).

¶ 20 Although defendant acknowledges that a dissent does not represent binding authority, he cites to the dissent in *People v. Breeden*, 2014 IL App (4th) 121049, ¶¶ 121-52 (Appleton, P.J., concurring in part and dissenting in part), opinion vacated in light of *People v. Castleberry*, No. 118880 (Jan. 20, 2016), which concluded that those charges are fines. The dissent in *Breeden* found that the three charges at issue, as assessed under similar statutes in other Illinois jurisdictions, are fines. *Id*. The dissent reasoned that the charges are meant to finance the operations of the clerk of the circuit court and other parts of the court system and do not compensate the State for the expense of prosecuting a defendant. *Id*.

¶ 21 While we note that contrary view, for the reasons set out above, we find that the clerk's automation and document storage charges and the court services (sheriff) assessment are fees, not fines. Thus, defendant cannot apply any of his presentence custody credit to those charges.

¶ 22 In conclusion, the $5 electronic citation fee and the $20 VCVA charge imposed against defendant are vacated. Accordingly, defendant owes a total of $434 in fines and fees, as opposed to the $459 ordered by the trial court. Furthermore, defendant is entitled to have two fines, the $15 State Police operations fee and the $50 Court System fee offset by a portion of his presentence credit. Applying that offset, the $434 amount owed by defendant is reduced another $65 to a total of $369 owed.

¶ 23 Pursuant to Rule 615(b)(1), we order the clerk of the circuit court to correct the fines and fees order to reflect a total amount due of $369. The judgment of the trial court is affirmed in all other respects.

¶ 24 Affirmed in part; vacated in part; fines and fees order corrected.