2017 IL App (1st) 143138-U

No. 1-14-3138

Order filed May 23, 2017

Second Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 20516
	)	
CARY HIGH,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for robbery is affirmed as the evidence at trial was sufficient to support a finding that defendant used the threat of force to deprive the victim of personal property. The trial court did not abuse its discretion in sentencing defendant to 8 years' imprisonment as a Class X offender. We also correct the fines and fees order.

¶ 2 Following a bench trial, defendant Cary High was convicted of robbery (720 ILCS 5/18-1(a) (West 2012)) and sentenced as a Class X offender to a term of 8 years' imprisonment. High appeals, arguing that the State failed to prove beyond a reasonable doubt that he threatened force

against the victim, that his sentence of 8 years' imprisonment is excessive, and that his fines and fees order should be corrected to vacate an improper assessment and to apply presentence custody credit to other assessments. For the reasons set forth herein, we affirm the judgment of the trial court and modify the fines and fees order.

¶ 3 High was charged with one count of robbery (720 ILCS 5/18-1(a) (West 2012)) and one count of unlawful restraint (720 ILCS5/10-3(a) (West 2012)). High waived his right to a jury trial, and the case proceeded to a bench trial during which the following evidence was presented.

¶ 4 In October of 2013, John Willis was a student at Colombia College and lived in the south loop neighborhood of the city of Chicago. At 9:20 p.m. on October 3, 2013, Willis was walking in the vicinity of 600 South Michigan Avenue when he walked past a man, whom he identified in court as High, who was trying to get his attention. High walked up from behind Willis and grabbed his shoulder. Being grabbed on the shoulder made Willis stop, and he testified that it made him scared. High told Willis that he did not mean any harm, introduced himself as "Rico," and asked him where he went to college. When Willis indicated that he went to Columbia College, High told him that he knew everybody at Columbia and that he was "like a bodyguard there."

¶ 5 Willis and High started to walk on the sidewalk, which Willis characterized as him trying to walk away and High following him. High then asked Willis to buy him a sandwich. Willis told High that he did not have any money with him. High said that he did not believe him. As Willis walked away, High told him that he would remember him.

¶ 6 During the afternoon of October 8, 2013, Willis was walking alone on South Michigan Avenue when he was again stopped by High, who said that he felt like he recognized him. High

again introduced himself as Rico and told Willis that he "was a bodyguard" for students at Colombia College. He then asked Willis to buy him something to eat. At this point, Willis felt "very scared." He said that he would buy High food at a nearby Subway restaurant. High told Willis that he was allergic to the food at Subway but that there was another place they could go "where if [Willis] [bought] him a meal he could eat for a week."

¶ 7 High began to lead Willis southbound on Michigan Avenue, and Willis followed High because he "almost felt like a hostage at this point." He testified that he "wasn't sure what else to do" other than follow High. High led Willis through streets and alleys, and Willis eventually refused to go any further and told High that he had to go to class. The pair was stopped on the street, just outside of an alley. Willis could not recall which street they were on. High asked Willis to give him money, and Willis took out his wallet. High told him not to take out his wallet and to step to the side, closer to the alley. Willis gave High two dollars, but High saw that there was more money in the wallet. High told Willis that two dollars "wasn't good enough" and demanded that Willis give him more money. High moved within one inch of Willis and "lunged" at him. Willis demonstrated to the court how High's fists were clenched and raised to chest height with his elbows cocked back. Willis stated that he was "afraid for his life," and that he gave all of his money to High. High told Willis that he wanted him to go to an ATM to get more money.

¶ 8 At this point, Willis ran back to Columbia College and told a campus security officer what had happened. He gave a description of High, and told police that he had been wearing a black and grey hooded sweatshirt. On October 16, 2013, Willis went to a Chicago police station

and viewed a physical lineup from which he identified High. On cross examination, Willis stated that he was standing on the sidewalk, and not in the alley, when he gave High money.

¶ 9 Following his arrest and after being advised of his *Miranda* rights, High spoke to detective Chris Blum. High denied that he was a bodyguard for students of Columbia College, but admitted to buying drugs and alcohol for students. He stated that he asks students to give him money or buy him a sandwich, and said that "I might be aggressive when the kids get smart, talk smart."

¶ 10 High told Blum "I never took anything, I never robbed anybody." High also told him that "[m]aybe I talk a little crazy, but I didn't rob anyone." During the interview with Blum, High referred to Columbia College students in general, and never specifically mentioned Willis.

¶ 11 The trial court found High guilty of robbery, but not guilty of unlawful restraint. High filed a motion to reconsider, arguing that although Willis subjectively felt afraid, High did not engage in outward conduct which should have made him afraid. In denying the motion, the trial court noted "whether or not it was in the alley or in the mouth of the alley * * * [defendant] got into the victim's face in a threatening manner and he cocked his fist as if he was going to punch him, which I think objectively is a threat of force."

¶ 12 High was Class X mandatory based on his previous convictions, but requested the minimum sentence of six years. He argued that the majority of his convictions were related to the fact that he was homeless. He also pointed out that his prior convictions for robbery and aggravated criminal sexual assault were over 20 years old. The trial court considered the factors in aggravation and mitigation, and specifically noted the lack of injury to the victim as a factor that weighed in High's favor. After reviewing "the presentence investigation, defendant's

background, his extensive criminal history," and his social and educational background, the trial court sentenced High as a Class X offender to 8 years' imprisonment. It assessed $504 in fines, fees, and costs, and credited High with 337 days of presentence incarceration. The trial court denied High's motion to reconsider sentence, and High timely filed a notice of appeal.

¶ 13 High first contends that the State failed to prove beyond a reasonable doubt that he threatened force against Willis. Specifically, he argues the State failed to prove that Willis's subjective fear was objectively reasonable.

¶ 14 The due process clause of the fourteenth amendment protects against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When a court reviews the sufficiency of evidence, it must determine " 'whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.' " *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson*, 443 U.S. at 318). A reviewing court must decide whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *Id.* (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). The testimony of a single credible witness may be sufficient to support a conviction. *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 65.

¶ 15 In Illinois, a person commits robbery when he knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2012). " '[T]he gist of the offense of robbery is the force or fear of violence directed at the victim in order to deprive him of his property.' " *People v. Johnson*, 2015 IL App (1st) 141216, ¶ 28 (quoting *People v. Dennis*, 181 Ill.2d 87, 104 (1998)). " 'The only difference between private stealing from the person of another [larceny or theft] and robbery lies in the force or intimidation used.' " *People v. Pierce*, 226 Ill 2d 470, 478 (2007) (quoting *Hall v. People*, 171 Ill. 540, 542, 49 N.E. 495 (1898)). A threat of force entails evidence that the victim's fear was such that in reason and common experience, the victim was induced to part with his property in the interest of his personal safety. *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999). A subjective feeling of fear will not support a conviction for robbery; the fear must be objectively reasonable. *People v. Dennis*, 181 Ill. 2d 87, 102 (1998).

¶ 16 The evidence here was sufficient to support High's robbery conviction. When High saw that Willis had more than two dollars in his wallet, High got "right up into" Willis's face, moving to within an inch of him. High "was lunging" at Willis and was "jerking forward," like High was "going to attack" him. Willis also demonstrated to the trial court how High's fists were clenched and his elbows were drawn back. As a result of High's actions, Willis felt compelled to give him the rest of his money. This evidence, when viewed in the light most favorable to the State, is sufficient to support a finding that High threatened the use of imminent force and that Willis's fear was objectively reasonable. We will therefore not disturb the trial court's finding of guilt.

¶ 17 High next argues that the trial court abused its discretion in sentencing him to eight years' imprisonment for a robbery conviction that was based on a panhandling incident where no actual force was employed.

¶ 18 A trial court has broad discretionary powers in imposing a sentence and its sentencing decisions are entitled to great deference on review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because of the trial court's superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). As such, reviewing courts will not alter a defendant's sentence absent an abuse of discretion. *People v. Busse*, 2016 IL App (1st) 142941, ¶20. A reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Busse*, 2016 IL App (1st) 142941, ¶ 20.

¶ 19 A sentence should reflect both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The trial court is presumed to have considered all relevant factors and any mitigation evidence *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. " 'A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill.2d 48, 54(1999)).

¶ 20 High was convicted of robbery, a Class 2 felony punishable by 3 to 7 years' imprisonment. 720 ILCS 5/18-1(a) (West 2012); 730 ILCS 5/5-4.5-35(a) (West 2012). High does not dispute that based on his criminal background, he was required to be sentenced as a Class X

offender to a prison term of 6 to 30 years. 730 ILCS 5/5-4.5-95(a) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). High, however, argues that an eight year sentence is disproportionate to the nature of his offense and at variance with the spirit of the law.

¶ 21 We do not find convincing High's assertion that imposing a sentence two years over the minimum sentence was an abuse of discretion. While it is true that Willis was not injured during this incident, High still engaged in inherently threatening behavior in order to induce Willis to give him money. Moreover, the trial court specifically noted that the lack of physical injury was a factor that weighed in High's favor. The court also considered High's social and criminal background, including a 1986 robbery conviction and a 1996 aggravated criminal sexual assault conviction. As the legislature enacted mandatory Class X sentencing to "protect the public health, safety and welfare" by increasing the sentencing range of recidivists (*People v. Thomas*, 171 Ill. 2d 207, 221 (1996)), we cannot say that High's sentence is "greatly at variance with the spirit and purpose of the law." Thus, we find that the trial court did not abuse its discretion in sentencing High to a term of 8 years' imprisonment.

¶ 22 High also argues that his $5 Electronic Citation fee should be vacated and that other assessments imposed by the trial court should be offset by his presentence incarceration credit.

¶ 23 Initially, High concedes that he did not raise these issues in the trial court. However, as the State does not argue forfeiture on appeal, the State has itself forfeited the claim that the issues raised by High are forfeited. *See People v. Whitfield*, 228 Ill. 2d 502, 509 (2007) (the State may forfeit the claim that an issue defendant raises is forfeited if the State does not argue forfeiture on appeal). Moreover, a defendant may request presentence credit for the first time on appeal. *People v. Lake*, 2015 IL App (3d) 140031, ¶ 31. We may modify a fines and fees order without

remanding the case to the trial court pursuant to Illinois Supreme Court Rule 615(b)(1). *People v. Bryant*, 2016 IL App (1st) 140421, ¶22. We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Glass*, 2017 IL App (1st) 143551, ¶21.

¶ 24 High first contends, and the State agrees, that the trial court erroneously assessed the $5 Electronic Citation fee (720 ILCS 105/27.3e (West 2012)) against him. The statute authorizing this fee dictates that it shall be paid by a defendant upon a judgment of guilty "in any traffic, misdemeanor, municipal ordinance, or conservation case." 720 ILCS 105/27.3e (West 2012). As defendant was convicted of a felony offense, the trial court erroneously assessed this fee against him. Accordingly, we vacate the $5 Electronic Citation fee. *See People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating an electronic citation fee where defendant was convicted of a felony).

¶ 25 High next argues that certain "fees" assessed against him are actually "fines" and should therefore be offset by his presentence incarceration credit. A defendant incarcerated on a bailable offense who does not supply bail and against whom a fine is levied is allowed a credit of $5 for each day of presentence incarceration. 725 ILCS 5/110-14(a) (West 2012). "The credit for presentence incarceration can only reduce fines, not fees." *People v. Jones*, 233 Ill. 2d 569, 599 (2006). A "fine" is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A "fee" is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id*. The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the State for any costs incurred as the result of prosecuting the defendant. *Id*.

¶ 26 High argues, and the State agrees, that the $15 State Police Operations assessment (705 ILCS 105/27.3a(1.5) (West 2012) and $50 Court System assessment (55 ILCS 5/5-1101(c) (West 2012)) should be offset by his presentence credit. This court has held that the State Police Operations assessment does not reimburse the State for costs incurred in a defendant's prosecution and is, therefore, a fine. *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 140 (citing *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31). We have also held that the Court System assessment is a fine because it "is essentially punitive, particularly because its amount varies depending on the degree of a defendant's offense." *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15. As High was incarcerated for 337 days, and is therefore entitled to $1,685 of credit, his $15 State Police Operations assessment and $50 Court System assessment are completely offset.

¶ 27 High next contends that the clerk's $15 Automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2012)) and $15 Document Storage fee (705 ILCS 105/27.3c(a) (West 2012)) assessed against him are actually fines, and should be offset by his presentence credit. High acknowledges that in *People* v. *Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that these assessments are fees, but argues that the analysis in *Tolliver* "cannot survive the Illinois Supreme Court's more recent decision in" *People v. Graves*, 235 Ill. 2d 244 (2009). We disagree. In *Graves*, the court held that the "central characteristic which separates a fee from a fine" is " 'whether the charge seeks to compensate the state for *any* costs incurred as the result of prosecuting the defendant.' " (Emphasis added.) *Graves*, 235 Ill. 2d at 250 (quoting *People v. Jones*, 223 Ill. 2d 569, 600 (2006). In *Tolliver*, this court held that 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." *Tolliver*, 363 Ill. App. 3d at 97. Thus, this court's analysis in *Tolliver* is in line with our

supreme court's reasoning that fees compensate for part of the overall costs incurred in the prosecution of a defendant. Accordingly, the $15 Document Storage fee and $15 Automation fee shall not be offset by defendant's presentence credit. *See People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (noting that *Tolliver* and *Graves* employed the same reasoning and holding that these fees are not offset by presentence credit).

¶ 28 High next challenges the $25 Court Services fee (55 ILCS 5/5-1103 (West 2012)) assessed against him. This fee is assessed to "defray[] court security expenses incurred by the sheriff in providing court services." 55 ILCS 5/5-1103 (West 2012). This court has previously determined that this assessment is fee because it is "compensatory and a collateral consequence of defendant's conviction." *Tolliver*, 363 Ill. App. 3d at 97. *See also People v. Kornegay*, 2014 IL App (1st) 122573, ¶ 53 (holding that the assessment is a fee that is not offset by presentence credit.) Accordingly, the $25 Court Services fee shall not be offset by High's presentence credit.

¶ 29 High next contends that he is entitled to presentence credit for the $2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2012)) assessed against him. However, this court has found that the State's Attorney Records Automation fee constitutes a fee, and not a fine, as it compensatory instead of punitive in nature. *People v. Reed*, 2016 IL App (1st) 140498, ¶16 (holding that the assessment is a fee because the "State's Attorney's office would have used its automated record keeping systems in the course of prosecuting defendant"). Accordingly, the $2 State's Attorney Records Automation fee shall not be offset by his presentence credit.

¶ 30 For the foregoing reasons, we vacate the $5 Electronic Citation fee assessed against High. We find that the $15 State Police Operations assessment and $50 Court System assessment are offset by High's presentence incarceration credit. The $15 Automation fee, $15 Document

Storage fee, $25 Court Services fee, and $2 State's Attorney Records Automation fee are not offset by credit. Pursuant to Illinois Supreme Court Rule 615(b)(1), we order the clerk of circuit court to correct the fines and fees order accordingly. We affirm the judgment in all other respects.

¶ 31 Affirmed as modified.