2017 IL App (1st) 143250-U
No. 1-14-3250
Order filed July 17, 2017

First Division

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. 12 CR 20103
	)	
JIMMIE BUTTRAM,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence for unlawful use or possession of a weapon by a felon modified from Class X to Class 2 where the parties agree that he was not eligible for a Class X sentence; fines and fees order amended to vacate two fees and apply monetary credit to two fines; contention that other fees are fines is without merit.

¶ 2 Following a bench trial, defendant Jimmie Buttram was convicted of unlawful use or possession of a weapon by a felon (UUWF) and sentenced to six years' imprisonment as a Class X offender based upon his criminal history. On appeal, defendant contends, and the State agrees, that the Class X sentence was erroneously imposed because defendant was not eligible for mandatory Class X sentencing. The parties agree that the classification for defendant's sentence

should be reduced to Class 2, his term of mandatory supervised release (MSR) should be reduced from three years to two years, and a new mittimus should be issued. The parties further agree that defendant's DNA assessment must be vacated. In addition, defendant contends that he is due monetary credit against several assessments which he asserts are fines rather than fees. We modify defendant's sentence, vacate two fees, apply monetary credit to two of the challenged assessments, and affirm defendant's conviction in all other respects.

¶ 3 The only issue of contention on appeal is the application of monetary credit against defendant's fines and fees assessment. Because defendant does not challenge his conviction, and the parties agree upon the sentencing modification, an abbreviated discussion of the proceedings and evidence adduced at trial is sufficient.

¶ 4 Defendant was tried on charges of UUWF, armed violence, possession with intent to deliver cannabis, and possession with intent to deliver cocaine. The evidence at trial established that on October 9, 2012, Chicago police executed a search warrant by making a forced entry into the first floor apartment at 7707 South Green Street. Officer Matthew Little observed defendant standing in the hallway and saw him make a motion with his arm as though he were throwing an object onto the floor. Defendant was detained and police recovered a loaded .38-caliber hammerless revolver from the floor, less than a foot away from defendant's feet. A woman, Denise Sharks, was sitting on a couch in the living room and was also detained. During the search, police recovered various amounts of cocaine, cannabis and cash from the living room and a bedroom. Defendant was arrested and advised of his *Miranda* rights. He then voluntarily told police that he initially thought he was being robbed, but when he heard the police announce their office, he "decided not to fire." Defendant also said that he threw his gun to the floor because he had no problem with the police doing their job. The State presented a certified copy of

defendant's 1995 conviction for murder. The trial court found defendant guilty of UUWF, but acquitted him of the drug charges and armed violence, which was predicated on the drug charges, because there was no evidence that he resided in the apartment, and a large amount of the drugs were recovered from the area where Sharks was sitting.

¶ 5 At sentencing, the State presented a certified copy of defendant's 1982 juvenile adjudication for robbery from California. The prosecutor noted that at the time of the offense defendant was 20 years old, and although considered a juvenile in California, he would have been considered an adult in Illinois. Consequently, the prosecutor asserted that the robbery charge should be considered a conviction, and together with his murder conviction, rendered him subject to mandatory sentencing as a Class X offender. The trial court sentenced defendant to six years' imprisonment as a Class X offender with a three-year term of MSR, and awarded him credit for 666 days in presentencing custody. The court also assessed defendant fines, fees and court costs totaling $699, and applied a $50 credit against his fines, leaving a balance of $649.

¶ 6 On appeal, defendant first contends, and the State agrees, that the trial court erred when it sentenced him as a Class X offender because he was not eligible for mandatory Class X sentencing. The parties agree that defendant's juvenile adjudication for robbery in California did not constitute a conviction. Consequently, they agree that defendant does not have two prior convictions for Class 2 or greater offenses, and thus, he does not meet the statutory requirements to be subject to sentencing as a Class X offender. 730 ILCS 5/5-4.5-95(b) (West 2012).

¶ 7 We concur with the parties' conclusion. The Class X sentencing statute provides, in relevant part:

> "When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, *after having twice been convicted* in any state or federal court of an offense that contains

> the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender." (Emphasis added.) 730 ILCS 5/5-4.5-95(b) (West 2012).

¶ 8 It is well settled that when construing a statute, we must give effect to the intent of the legislature by giving the language of the statute its plain and ordinary meaning. *People v. Smith*, 2016 IL 119659, ¶ 27. In doing so, we must not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express. *Id.*

¶ 9 Pursuant to the statute, in order to be sentenced as a Class X offender, a defendant must have two prior *convictions* that would now be classified as Class 2 or greater felonies in Illinois. The plain language of the statute does not provide for consideration of a juvenile adjudication to qualify for a Class X sentence. Compare 730 ILCS 5/5-5-3.2(b)(7) (West 2012) (specifically allowing consideration of a prior juvenile delinquency adjudication for imposition of an extended-term sentence).

¶ 10 Moreover, our supreme court has expressly found that juvenile adjudications are not included in the definition of "conviction" in the Illinois Criminal Code. *People v. Taylor*, 221 Ill. 2d 157, 163-64 (2006). The court further noted "[n]or has any Illinois case ever held that a juvenile adjudication constitutes a criminal conviction—although Illinois cases have specifically held that juvenile adjudications do not constitute convictions." *Id.* at 164, 176-78 (discussing cases cited therein and finding that the legislature had no intent to include juvenile adjudications within its definition of "conviction" in the Criminal Code).

¶ 11 Based on the plain language of the statute, and our supreme court precedent, we find that defendant's prior juvenile adjudication in California did not constitute a "conviction" within the meaning of the Class X offender statute. We therefore agree with the parties' conclusion that defendant does not have two prior convictions for Class 2 or greater offenses, and thus, he does not meet the statutory requirements to be subject to sentencing as a Class X offender.

¶ 12 The parties point out that defendant has completed his term of incarceration and is currently serving a three-year term of MSR which expires on September 30, 2018. The website for the Illinois Department of Corrections (IDOC) confirms that this information is correct. See *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010) (this court may take judicial notice of the information appearing on IDOC's website).

¶ 13 The parties agree that this court should reduce the classification of defendant's sentence from Class X to Class 2, and reduce his term of MSR from three years to two years. We concur. Pursuant to our authority under Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999)), we reduce defendant's sentence from six years as a Class X offender to six years for a Class 2 offense. We also reduce defendant's term of MSR from three years to two years. We direct the clerk of the circuit court to issue a new mittimus in accordance with our order.

¶ 14 We note that in defendant's opening brief, he raised a separate issue contending that he was subjected to improper double enhancement where his prior murder conviction was used as both an element of the UUWF offense and as a prior conviction to impose the Class X sentence. The State agrees that defendant is not eligible for Class X sentencing and asserts that we need not address the double enhancement issue. In reply, defendant agrees that no further action is required. Accordingly, we give no further consideration to this issue.

¶ 15 Defendant next contends, and the State agrees, that the $250 State DNA ID System fee assessed pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2012)) was erroneously assessed and must be vacated. The parties agree that this fee may be imposed only once, and that it is presumed that defendant was already assessed this fee for his 2006 felony conviction for possession of a controlled substance. See *People v. Marshall*, 242 Ill. 2d 285 (2011); *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Accordingly, we vacate the $250 DNA fee. Pursuant to our authority under Rule 615(b)(1), we direct the circuit court to amend the fines, fees and costs order by vacating this fee.

¶ 16 Defendant next contends that his fines and fees order must be amended. He argues that he is entitled to have additional monetary credit for the days he spent in presentencing custody applied against several assessments which he claims are fines rather than fees.

¶ 17 The record reveals that defendant did not preserve this issue for appeal because he did not file a postsentencing motion or otherwise challenge the assessments in the trial court. He argues, however, that claims for the statutory monetary credit may be raised at any time and at any stage of court proceedings. See *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 18 It is well settled that a defendant forfeits a sentencing issue that he or she fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. Here, the State has not asserted that defendant forfeited his challenges to the assessments. Accordingly, we address the merits of defendant's claims. Furthermore, defendant's statutory right to the *per diem* presentencing monetary credit is mandatory, not subject to the normal rules of waiver, and may

be raised for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997). The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 19 Pursuant to section 110-14 of the Code of Criminal Procedure (725 ILCS 5/110-14 (West 2012)), a defendant is entitled to have a credit applied against his fines of $5 for each day he spent in presentence custody. Here, defendant spent 666 days in presentence custody, and is therefore entitled to a maximum credit of $3,330. The fines and fees order indicates that the trial court applied a credit of $50 against defendant's fines. Defendant claims, however, that five additional assessments labeled as fees are actually fines, and that he is entitled to apply an additional credit of $94 to offset these charges.

¶ 20 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 21 The parties agree that defendant is due full credit for the $50 Court System Fee (55 ILCS 5/5-1101(c) (West 2012)) and the $15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2012)). Both parties point out that, although these two charges are labeled fees, this court previously held that they are fines because they do not compensate the State for expenses incurred in the prosecution of defendant, and thus, they are subject to offset by the monetary

sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17. Pursuant to our authority under Rule 615(b)(1), we direct the circuit court to amend the fines, fees and costs order to reflect a $50 credit for the Court System Fee and a $15 credit for the State Police Operations Fee.

¶ 22 Defendant contends that he is entitled to credit against the $25 Court Services (Sheriff) fee assessed pursuant to section 5-1103 of the Counties Code (Code) (55 ILCS 5/5-1103 (West 2012)). Defendant points out that the assessment applies to all defendants who are found guilty of an offense, and argues that it therefore constitutes a penalty. He further notes that the purpose of the assessment is to defray court security expenses incurred by the sheriff. Consequently, he argues that the assessment does not compensate the State for the costs of prosecuting a particular defendant, and thus, it is a fine rather than a fee.

¶ 23 Defendant acknowledges that in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that the Court Services (Sheriff) fee is a fee, not a fine, because it is compensatory in nature and a collateral consequence of a defendant's conviction. Defendant asserts, however, that *Tolliver* predates *Graves* and is not persuasive where its analysis is contrary to *Graves*, which held that a fee must reimburse the State for some cost incurred in prosecuting the defendant.

¶ 24 The analysis in *Tolliver* is not contrary to *Graves*. *Graves* states that pursuant to *Jones*, when determining whether a charge is a fine or a fee, "the most important factor 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 *Jones*, *Graves* further provides " '[t]his is the *central* characteristic which separates a fee from a fine. A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution. [Citations.]' " (Emphasis in original.) *Id.* (quoting *Jones*, 223 Ill. 2d at 600).

Similarly, *Tolliver* states 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, both *Graves* and *Tolliver* applied the same reasoning that fees compensate for part of the overall costs incurred in the prosecution of a defendant.

¶ 25 Section 5-1103 of the Code states that the Court Services fee is "dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security." 55 ILCS 5/5-1103 (West 2012). As defendant correctly acknowledges, in *Tolliver*, we held that the charge was a fee because it was compensatory and a collateral consequence of the defendant's conviction. *Tolliver*, 363 Ill. App. 3d at 97. Similarly, in *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010), we found that the plain language of the statute indicated that the charge was a fee assessed to defray the expenses incurred by the sheriff for providing court security during the defendant's court proceedings. Accordingly, we concluded that the charge could not be offset by the presentence custody credit. *Id.* at 145. See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the court services fee is a fee rather than a fine).

¶ 26 During the prosecution of every defendant, the sheriff provides security in the courtroom. In this case, defendant was in the custody of the sheriff throughout all of his proceedings. Consequently, the sheriff transported defendant to and from the courthouse for all of his proceedings, held him in the holding cell while he waited for his case to be called on each court date, escorted him in and out of the courtroom, and remained in the courtroom to provide security throughout all of defendant's proceedings. The Court Services fee compensates the sheriff for the costs incurred in providing the security and services that are absolutely vital to the process of prosecuting a defendant. Accordingly, we adhere to our reasoning in *Tolliver* and

Adair, and continue to hold that the Court Services fee is a fee rather than a fine. Therefore, defendant is not entitled to offset this fee with his presentence custody credit.

¶ 27 Finally, defendant contends that he is entitled to credit against the $2 State's Attorney Records Automation fee assessed pursuant to section 4-2002.1(c) of the Code (55 ILCS 5/4-2002.1(c) (West 2012)) and the $2 Public Defender Records Automation fee assessed pursuant to section 3-4012 of the Code (55 ILCS 5/3-4012 (West 2012)). Defendant points out that these assessments apply to all defendants who are found guilty of an offense, and that the purpose of the assessments is to discharge the expenses associated with establishing and maintaining automated record keeping systems. He argues that the assessments therefore do not compensate the State for prosecuting a particular defendant, and thus, they constitute fines rather than fees.

¶ 28 This court has repeatedly found that the $2 State's Attorney Records Automation fee and the $2 Public Defender Records Automation fee are compensatory in nature because they reimburse the State for its expenses related to maintaining its automated record-keeping systems. *Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (Public Defender assessment is a fee, not a fine); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (State's Attorney assessment is a fee, not a fine). In *Reed*, we explained that the State's Attorney's Office would have utilized its automated record-keeping systems in prosecuting the defendant when it filed charges with the clerk's office and made copies of discovery that were tendered to the defense. *Reed*, 2016 IL App (1st) 140498, ¶ 16. We further explained that because the defendant was represented by a public defender, counsel would have used the public defender's office record systems in representing the defendant. *Id.* at ¶ 17. Consequently, we concluded that the assessments were fees, not fines, and thus, not subject to offset by the *per diem* credit. *Id.* at ¶¶ 16-17; *Green*, 2016

IL App (1st) 134011, ¶ 46; *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30. *Contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (finding the assessments are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant).

¶ 29 We agree with the holdings in *Reed*, *Green*, *Bowen* and *Rogers*, and in this case, similarly conclude that the State's Attorney Records Automation fee and the Public Defender Records Automation fee are fees, not fines. Accordingly, defendant is not entitled to offset these fees with his presentence custody credit.

¶ 30 Nonetheless, the State points out that in this case, defendant was not represented by the public defender, but instead, by private counsel. Consequently, the State asserts that the Public Defender Records Automation fee is inapplicable here and should be vacated. Defendant maintains that the assessment is a fine which should be offset by the credit, but argues that in the alternative, if this court rejects his argument, then the fee should be vacated.

¶ 31 In accordance with our prior decisions, because defendant was represented by private counsel rather than the public defender, we find that the Public Defender Records Automation fee is inapplicable here and we vacate that fee. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 75; *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30. We therefore direct the circuit court to further amend the fines, fees and costs order by vacating this fee.

¶ 32 For these reasons, we reduce defendant's sentence from six years as a Class X offender to six years for a Class 2 offense, and reduce his term of MSR from three years to two years. We direct the clerk of the circuit court to issue a new mittimus in accordance with our order. In addition, we vacate the $250 State DNA ID System fee and the $2 Public Defender Records Automation fee from the Fines, Fees and Costs order. We direct the circuit court to further

amend that order to reflect a credit of $65 to offset the $50 Court System Fee and the $15 State Police Operations Fee. Defendant's adjusted total assessment should be $332. We affirm defendant's conviction in all other respects.

¶ 33 Affirmed as modified; mittimus corrected; fines and fees order corrected.