FOURTH DIVISION
January 26, 2017

No. 1-14-3639

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 7166
	)	
LAVELLE BURNS,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment affirmed; order assessing fines, fees, and costs corrected.

¶ 2 Following a jury trial, defendant Lavelle Burns was found guilty of the Class 2 felony of delivery of less than one gram of heroin. Based on his prior convictions, defendant was

sentenced as a Class X felon to six years and six months in the Illinois Department of Corrections and three years of mandatory supervised release. The court granted defendant credit for 96 days spent in custody prior to sentencing and imposed various fines, fees, and costs. Defendant's sole contention on appeal is that the trial court imposed several unauthorized assessments and failed to grant defendant $5-per-day credit against his fines. For the following reasons, we order the clerk of the circuit court of Cook County to correct the order assessing fines, fees, and costs.

¶ 3 As an initial matter, defendant concedes that he failed to object to the order imposing fines, fees, and costs at sentencing or in a postsentencing motion. Although defendant failed to challenge his fines and fees in the trial court, under Illinois Supreme Court Rule 615(b) (eff. Aug. 17, 1999), we may modify the fines and fees order without remanding the case back to the circuit court. *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 45. The propriety of a trial court's imposition of fines and fees raises a question of statutory interpretation, which we review *de novo. People v. Millsap*, 2012 IL App (4th) 110668, ¶ 23.

¶ 4 Defendant first maintains, the State concedes, and we agree that the trial court erroneously imposed several assessments that should be vacated: the $5 Electronic Citation fee (705 ILCS 105/27.3e (West 2014)); the $5 Court System fee (55 ILCS 5/5-1101(a) (West 2014)); the $20 Violent Crime Victim Assistance fine (725 ILCS 240/10(c) (West 2014)); and the $250 State DNA ID System fee (730 ILCS 5/5-4-3(j) (West 2014)).

¶ 5 Under the statute, the $5 Electronic Citation fee "shall be paid by the defendant in any traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2014). Here, defendant was found guilty for the Class 2 felony of delivery of a controlled

substance in violation of section 401(d) of the Illinois Controlled Substances Act (720 ILCS 570/401(d) (West 2014)). Because defendant was not found guilty of a violation of a traffic, misdemeanor, municipal ordinance, or conservation offense, the $5 Electronic Citation fee was erroneously assessed. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46.

¶ 6 The statute providing for the Court System fine requires "[a] $5 fee to be paid by the defendant on a judgment of guilty *** for violation of the Illinois Vehicle Code *** or violations of similar provisions contained in county or municipal ordinances committed in the county." 55 ILCS 5/5-1101(a) (West 2014). As defendant was not found guilty of a violation of the Illinois Vehicle code, the $5 Court System fine was erroneously assessed against him. See *People v. Price*, 375 Ill. App. 3d 684, 698 (2007). Accordingly, we vacate the $5 Electronic Citation fee and the $5 Court System fine.

¶ 7 The $20 Violent Crime Victims Assistance Fund fine, as defined at the time of defendant's offense in 2011, applied only where "no other fine is imposed." 725 ILCS 240/10(c) (West 2010) (effective through July 2012); *People v. Lee*, 379 Ill. App. 3d 533, 541 (2008). Because defendant was charged several fines, we vacate the $20 Violent Crime Victims Assistance Fund fine.

¶ 8 The statute providing for the DNA System fee provides, "Any person *** convicted or found guilty of any offense classified as a felony under Illinois law *** shall, *** be required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police." 730 ILCS 5/5-4-3(a) (West 2014). In addition, "Any person required by subsection (a) *** to submit specimens of blood, saliva, or tissue *** shall pay an analysis fee of $250." 730 ILCS 5/5-4-3(j) (West 2014). In *People v. Marshall*, 242 Ill. 2d 285 (2011), our supreme court held that "section

5-4-3 authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database." *Marshall*, 242 Ill. 2d at 303. A 1997 amendment to section 5-4-3 added the DNA analysis and fee requirement (Pub. Act 90–130 (eff. Jan. 1, 1998) (amending 730 ILCS 5/5–4–3 (West 1996)).

¶ 9 Here, the record reflects that defendant has two prior convictions for felonies that he committed after the effective date of the DNA analysis requirement, one in 2004, and another in 2009 for an offense he committed in 2005. The provision extending the requirement to "any offense classified as a felony under Illinois law" was in effect by the time defendant committed the felonies in 2004 and 2005. See 730 ILCS 5/5-4-3(a) (West 2004). We have previously held that "[b]ecause section 5-4-3 mandates that anyone convicted of a felony must submit a DNA sample and be assessed the DNA analysis fee, we presume that the circuit court imposed this requirement as part of defendant's sentence following at least one of his prior convictions." *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Accordingly, we find that the $250 the DNA System fee was erroneously assessed and vacate the fee. See *id*.

¶ 10 Next defendant contends, the State concedes, and we agree that he is entitled to $480 worth of $5-per-day presentence custody credit against his fines for the 96 days he spent in custody prior to sentencing. Under section 110-14(a) of the Code of Criminal procedure of 1963, an offender who has been assessed one or more fines is entitled to a $5-per-day credit for time spent in custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2014). It is well settled that the presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). Our supreme court has held that

claims for $5-per-day credit may be raised at any time and stage of court proceedings, and that if the basis for granting such credit is clear and available from the record, an appellate court may grant the relief requested. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). Because defendant spent 96 days in custody prior to sentencing, he is entitled to offset the fines assessed against him by $480.

¶ 11 Defendant argues, the State concedes, and we agree that he is entitled to offset the following fines assessed against him by his $480 worth of sentencing credit: the $10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2014)); the $5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2014)); the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2014)); and the $1000 Controlled Substance fine (720 ILCS 570/411.2(a)(3) (West 2014)). In *People v. Graves*, 235 Ill. 2d 244, 251-52, 255 (2009), our supreme court held that $10 Mental Health Court and the $5 Youth Diversion/Peer Court charges are "fines." Applying *Graves*, in *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009), this court held that the $30 Children's Advocacy Center charge is a "fine." Our supreme court has held that the Controlled Substance assessment is a "fine." *Jones*, 223 Ill. 2d at 592.

¶ 12 Here, although the order assessing costs, fines, and fees correctly characterized these four fines totaling $1045 as "fines" offset by the $5-per-day credit, it does not reflect a deduction for the credit. Accordingly, we order the clerk of the circuit court to correct the fines and fees order to reflect that defendant's $480 presentence custody credit applies to offset these four fines properly assessed against him as fines.

¶ 13 Finally, defendant argues that if we do not find that he is entitled to offset the four fines discussed above by his $480 presentence custody credit, we should apply the credit to several

charges which defendant maintains were erroneously characterized as "fees:" the $15 State Police Operations fee (705 ILCS 105/27.3a(1.5) (West 2014)); the $15 Automation fee (705 ILCS 105/27.3a(1) (West 2014)); the $15 Document Storage fee (705 ILCS 105/27.3c(a) (2014)); and the $50 Court System fee (55 ILCS 5/5-1101(c) (West 2014)). Here, we have granted defendant's request to apply his $480 worth of sentencing credit towards the $1045 in fines properly characterized as fines on the order assessing fines, fees, and costs. Because defendant's $480 worth of sentencing credit is less than $1045, we need not address defendant's alternative argument regarding the erroneous characterization of certain fees.

¶ 14 In sum, we vacate the $5 Electronic Citation fee; the $5 Court System fee; the $20 Violent Crime Victim Assistance fine; and the $250 DNA System fee, and direct the clerk of the circuit court of Cook County to reduce the $1,809 total amount of fines, fees, and costs by $280. We further direct the clerk of the circuit court of Cook County apply $480 worth of $5-per-day credit for the 96 days defendant spent in presentence custody to reduce the fines assessed against him.

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Cook County and order the clerk of the circuit court of Cook County to correct the order assessing fines, fees, and costs.

¶ 16 Affirmed; fines, fees, and costs order corrected.