

2017 IL App (1st) 143653-U

No. 1-14-3653

Order filed May 4, 2017

Fourth 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. 14 CR 9479
)	
LARRY PENA,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

Held: We vacate one improperly-assessed fee, reduce the amount of one fee, and modify the sentencing order and the fines and fees order.

¶ 1 Following a bench trial, defendant Larry Pena was convicted of driving with a revoked or suspended license (625 ILCS 5/6-303(a) (West 2012)) and sentenced to 18 months probation. He was also assessed a \$900 probation fee, and fines and fees in the amount of \$724. On appeal, he argues two fees were improperly assessed and several other fees are actually fines, subject to

presentence incarceration credit. We vacate one improperly-assessed fee, reduce one fee, and modify the sentencing order and the fines and fees order.

¶ 2 The evidence presented at trial established that defendant was found by a police officer asleep inside his running vehicle, parked in front of a bus stop. After processing defendant's information and learning he had a revoked driver's license, the police officer arrested defendant. The State offered into evidence defendant's certified driving abstract, which indicated his license was revoked at the time of the offense.

¶ 3 The trial court found defendant guilty of driving with a revoked or suspended license and sentenced him to 18 months probation with the first 180 days served in Cook County jail. It also assessed a \$900 probation fee and fines and fees in the amount of \$724. Defendant filed a timely notice of appeal.

¶ 4 Defendant did not raise this challenge in the trial court. However, we may modify a fines and fees order without remand per Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22. We review *de novo* the propriety of the fines and fees imposed by the trial court. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 5 Defendant argues, and the State agrees, the \$5 fee entitled "Electronic Citation Fee (Clerk & Arresting Agency), 705 ILCS 105/27.3e" was improperly assessed and should be vacated because it does not apply to felonies. See 705 ILCS 105/27.3e (West 2014). Here, defendant was convicted of felony driving with a revoked or suspended license, which is not provided for in the statute. See 705 ILCS 105/27.3e (West 2014); *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Accordingly, we vacate this \$5 fee.

¶ 6 Defendant next contends that several fees imposed against him are actually fines subject to presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) (“the credit for presentence incarceration can only reduce fines, not fees”). “A ‘fee’ is defined as a charge that ‘seeks to recoup expenses incurred by the state,’ or to compensate the state for some expenditure incurred in prosecuting the defendant.” *People v. Graves*, 235 Ill. 2d 244, 250 (quoting *Jones*, 223 Ill. 2d at 582). “A ‘fine’ *** is ‘punitive in nature’ and is ‘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 defendant incarcerated on a bailable offense who does not post bail and against whom a fine is imposed is allowed a \$5 credit for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014).

¶ 7 Defendant argues, and the State correctly concedes, the \$15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) and the \$50 court system fee (55 ILCS 5/5-1101(c) (West 2014)) are fines subject to presentence incarceration credit. We agree with the parties that these assessments are fines subject to presentence credit. See *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140-41 (“[s]ince the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it”); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (“we hold that the \$50 Court System fee imposed pursuant to section 5-1101(c) is a fine for which defendant can receive credit for the *** days he spent in presentence custody”). Defendant also argues the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2014)) is a fine, and we agree based on *People v. Graves*, 235 Ill. 2d 244 (2009), which found the charges contained in section 5-1101 of the Counties Code to be “monetary penalties to be paid by a defendant on a

judgment of guilty *** for violation of certain sections of the Illinois Vehicle Code or of the United Code of Corrections.” *Graves*, 235 Ill. 2d at 253; see *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21. Accordingly, we find these three charges to be fines subject to presentence incarceration credit.

¶ 8 Defendant next argues the \$190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(1) (West 2014)), the \$15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), and the \$25 court services fee (55 ILCS 5/5-1103 (West 2014)) are fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and found they are fees, not fines. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42 (relying on *Tolliver* and finding the \$190 felony complaint filing fee to be a fee not subject to presentence incarceration credit); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit).

¶ 9 Defendant primarily relies on our supreme court’s decision in *Graves* to argue that the aforementioned fees are actually fines. *Graves* held that, for an assessment to be called a fee, it must reimburse the State for costs incurred in prosecuting the defendant. *Graves*, 235 Ill. 2d at 250. We used the same reasoning in *Tolliver*, that the charges are fees as they do represent a part of the cost incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 (“[w]e find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered ‘fees’ rather than ‘fines’ ”); *Brown*, 2017 IL App (1st) 142877, ¶ 78. Thus, we hold that these assessments are fees not subject to presentence incarceration credit.

¶ 10 Next, defendant argues the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) and the \$2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)) are actually fines because they do not compensate the State for prosecuting defendant.

¶ 11 This court has previously found both the \$2 State's Attorney records automation fee and the \$2 Public Defender records automation fee are not fines and thus, not subject to presentence custody credit. See generally *Brown*, 2017 IL App (1st) 142877, ¶¶ 73, 75 (finding the State's Attorney records automation fee and Public Defender records automation fee to be fees); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding the State's Attorney records automation assessment and the Public Defender records automation assessment are both fees because they are meant to reimburse the State for expenses related to automated record-keeping systems); *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (agreeing with the analysis in *Bowen* that the \$2 Public Defender Records Automation assessment is a fee); *People v. Rogers*, 2014 IL App (4th) 121088, ¶30 (finding the State's Attorney records automation assessment is a fee as it serves to reimburse the State's Attorney for costs associated with automated record-keeping); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (agreeing with *Bowen* and *Rogers* in finding both the State's Attorney records automation assessment and Public Defender records automation assessment are fees). Although we recognize that *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, found these assessments to be fines, we follow *Brown* and determine the Public Defender records automation charge and the State's Attorney records automation charge are fees, not subject to offset by presentence custody credit.

¶ 12 Defendant argues the \$50 per month probation fee (730 ILCS 5/5-6-3(i) (West 2014)) was improperly assessed as any amount over \$25 requires the trial court to inquire about the offender's ability to pay. Because the trial court did not question defendant and simply ordered \$900 (\$50 per each of the 18 months) to be taken from his \$1000 bond, defendant argues this court should reduce the amount to \$25 per month, or \$450 total. The State responds this issue was not preserved for appeal, but concedes the trial court did not question defendant about his ability to pay. The State argues the proper remedy is to remand to the trial court to allow for the defendant's ability to pay an amount over \$25 to be determined. We reduce the monthly probation fee to \$25 per month, or \$450 total. *C.f. People v. Moore*, 2015 IL App (1st) 141451, ¶ 42 (noting that a remand to determine the defendant's ability to pay the public defender's fee does not serve the interests of judicial economy given the monetary costs involved coupled with the usually stressed court docket).

¶ 13 Defendant is entitled to \$185 of credit to offset his fines because of the 37 days he spent in presentence custody. Additionally, defendant has already received credit for \$50 in fines not at issue in this appeal. Vacating the aforementioned \$5 fee and applying defendant's presentence incarceration credit towards the fines (including the \$15 State Police Operations charge, the \$50 court system fee, and the \$5 court system fee), the fines and fees order should reflect a new balance of \$599.

¶ 14 For the reasons set forth above, we vacate the \$5 electronic citation fee, and we find the \$15 state police operations charge, the \$50 court system fee, and the \$5 court system fee are fines subject to offset by presentence incarceration credit. However, the \$190 felony complaint fee, the \$15 automation fee, the \$15 document storage fee, the \$25 court services fee, the \$2

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State's Attorney records automation fee, and the \$2 Public Defender records automation fee are fees that cannot be offset by presentence incarceration credit. We further reduce the monthly probation fee to \$450. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the sentencing order and the fines and fees order accordingly.

¶ 15 Affirmed as modified.