

No. 1-15-0212

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 21749
)	
CHAVEZ CRUZ,)	Honorable
)	William O'Brien,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* We correct the fines and fees order and affirm the judgment in all other respects.

¶ 2 Following a bench trial, defendant Chavez Cruz was convicted of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2014), and sentenced to twenty-four years' imprisonment. On appeal, defendant challenges certain fines and fees imposed by the trial court. We affirm as modified.

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¶ 3 Defendant was charged with multiple counts of armed robbery with a firearm, unlawful restraint, and aggravated unlawful use of a weapon. The State proceeded to trial on four counts of armed robbery with a firearm, and two counts of aggravated unlawful use of a weapon. The evidence at defendant's bench trial established that, on October 27, 2012, defendant and a co-defendant robbed a group of young adults at gun point as the group was walking home from a church youth-group function. Defendant and co-defendant took cell phones, mp3 players, wallets, and cash from three members of that group. The trial court found defendant guilty of all counts. He was subsequently sentenced to to twenty-four years' imprisonment, three years of mandatory supervised release, and \$714 of mandatory fines, fees, and costs on the armed robbery with a firearm conviction. The trial court credited defendant with 785 days of presentence custody.

¶ 4 On appeal, defendant contends that the trial court imposed certain fines and fees in error and that other charges should be offset by presentence credit.

¶ 5 Defendant concedes that he did not challenge these assessments in the trial court. However, a reviewing court 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, ¶42), and "a defendant may request presentence [custody] credit for the first time on appeal." *People v. Lake*, 2015 IL App (3d) 140031, ¶31.

¶ 6 We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60. 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 2014). 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.*

¶ 7 Defendant first argues, and the State correctly concedes, that he is entitled to presentence incarceration credit toward the \$30 children's advocacy center (CAC) assessment. 55 ILCS 5/5-1101(f-5) (West 2014). This court has previously determined that the CAC “fee” is “more appropriately characterized as a fine” and can be offset by presentence credit. *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009). As defendant spent 785 days in presentence custody, defendant's \$3,925 presentence credit completely offsets the CAC fine of \$30.

¶ 8 Defendant next argues, and the State correctly concedes, that he is entitled to presentence incarceration credit toward the \$15 state police operations fee (705 ILCS 105/27.3a-1.5 (West 2014)) as this court has previously determined that this “fee” operates as a fine. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46; *See also People v. Wynn*, 2013 IL App (2d) 120575, ¶ 13. Therefore, the assessed state police operations fee of \$15 is completely offset by defendant's \$3,925 presentence credit.

¶ 9 Defendant next contends that he is entitled to presentence credit against both the \$2 public defender records automation fee and the \$2 state's attorney records automation fee assessed against him. 55 ILCS 5/3-4012 (West 2014); 55 ILCS 5/4-2002.1(c) (West 2014). However, this court has found that both the state's attorney records automation fee and the public defender records automation fee constitute fees, and not fines, as they are compensatory instead

of punitive in nature. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65 (citing *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30). *Contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56. Accordingly, neither of the records automation fees are offset by defendant's presentence credit.

¶ 10 Defendant also contends that the clerk's \$15 document storage fee (705 ILCS 105/27.3c (a) (West 2014)) and \$15 automation fee (705 ILCS 105/27.3a (1), (1.5) (West 2014)) assessed against him are actually fines, and should be offset by his presentence credit. However, this court previously found that these charges are "compensatory and a collateral consequence of defendant's conviction," and therefore are fees rather than fines. *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). This decision is in line with our supreme court's holding 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.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *People v. Jones*, 223 Ill. 2d 569, 600 (2006)). Accordingly, the \$15 document storage fee and \$15 automation fee shall not be offset by defendant's presentence credit.

¶ 11 Defendant next argues, and the State correctly concedes, that he is entitled to presentence incarceration credit toward the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)). Citing our supreme court's decisions in *Graves* and *Jones*, courts have repeatedly held that this "fee" is actually a fine that is offset by presentence credit. *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21; *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30; *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17. Accordingly, we hold that the \$50 court system fee assessed against defendant is offset by his presentence credit.

¶ 12 Defendant also asserts that certain fees assessed against him were charged in error, and should be vacated. First, defendant argues, and the State correctly concedes, that the \$5 electronic citation fee assessed against him should be vacated. This fee was established "[t]o defray the expense of establishing and maintain electronic citations." 705 ILCS 105/27.3e (West 2014). However, the statute applies only upon judgment of guilty or grant of supervision in "traffic, misdemeanor, municipal ordinance, or conservation" cases. *Id.* This court has ruled that this fee does not apply to felonies, as they do not fall into the statute's enumerated categories. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115. Because defendant was convicted of a felony, we vacate \$5 electronic citation fee.

¶ 13 Second, defendant asserts that his \$25 fine pursuant to the Violent Crime Victims Assistance Fund (VCVA) should be vacated, as this fine was assessed pursuant to a section of the statute that authorizes this fine when no other fine has been imposed on a defendant. 725 ILCS 240/10(c)(1) (West 2010). The State agrees that the fine was assessed pursuant to the wrong section of the statute. However, it disagrees that the fine should be vacated entirely and contends that an \$8 fine should be assessed under the section of the statute that applies to defendants who have been assessed other fines. 725 ILCS 240/10(b) (West 2010).

¶ 14 Section 10 of the Violent Crimes Victims Assistance provides for a penalty to be collected from each defendant convicted of a felony. 725 ILCS 240/10 (b) (West 2014). Prior to July 16, 2012, if no other fines were imposed on a defendant, the penalty to be collected was \$25 for crimes of violence and \$20 for any other felony. See 725 ILCS 240/10(c)(1), (c)(2) (West 2010). If other fines were imposed, the penalty was "\$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010). The fines, fees, and costs order signed by the trial

court acknowledges the distinction, providing separate line entries for VCVA fines for defendants who have been assessed other fines and those who have not. However, neither of these statutory sections applied to defendant.

¶ 15 Effective July 16, 2012, the statute was amended, eliminating the distinction. Instead, the amended statute provides for a \$100 fine for all felony convictions. 725 ILCS 240/10(b)(1) (West 2014). This was the statute in effect at the time of both defendant's offense, October 20, 2012, and sentencing, December 19, 2014. "A defendant is 'entitled to be sentenced under either the law in effect at the time of the offense or the law in effect at the time of sentencing.' " *People v. Calhoun*, 377 Ill. App. 3d 662, 664 (2007) (quoting *People v. Hollins*, 51 Ill. 2d 68, 71 (1972)). Therefore, defendant should have had VCVA fees assessed pursuant to the amended (current) statute. Accordingly, we vacate the incorrectly imposed VCVA fine.

¶ 16 For the forgoing reasons, we vacate the \$5 electronic citation fee and \$25 VCVA fine assessed against the defendant. We find the \$30 children's advocacy center fee, the \$15 state police operation's fee, and the \$50 court system fee are offset by defendant's monetary credit for presentence incarceration. The \$2 public defender records automation fee, the \$2 state's attorney records automation fee, the county clerk's \$15 document storage fee, and the clerk's \$15 automation fee are not offset by credit. We direct the clerk of the circuit court to correct the fines and fees in accordance with this order.

¶ 17 Affirmed as modified.