FOURTH DIVISION
December 14, 2017

No. 1-15-0214

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 2271
	)	
KEITH OATIS,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Amendment to statute automatically transferring defendant to adult court did not apply retroactively to case pending on direct appeal when amendment enacted. Monetary assessments against defendant properly characterized as fees not subject to offset by pretrial custody credit.

¶ 2 Following a bench trial, defendant Keith Oatis was convicted of aggravated battery with a firearm. Defendant, who was fifteen years old at the time of the offense, was tried and sentenced as an adult pursuant to the automatic-transfer provision of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/5-130 *et seq*. (West 2013)). Defendant contends that Public Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130, 5-805 (West 2014)) applies retroactively to his case on appeal. Specifically, he contends that the amendment exempts him from the provision of the Act requiring him to be automatically transferred to adult court. Thus, defendant asks us to

vacate his sentence and remand his case to the juvenile court for resentencing. Defendant also contends that several monetary assessments imposed by the circuit court should have been offset by his $5-per-day credit for presentence custody because they are fines rather than fees.

¶ 3 We affirm. The amendment to the Act does not apply to defendant's case because the trial-court proceedings were already complete, and his case was pending on direct appeal, when the amendment was enacted. And the monetary charges at issue were fees, not fines, and so were not subject to offset by defendant's presentence custody credit.

¶ 4 Because defendant's appeal is limited to these issues, our discussion of the underlying offense will be brief. Defendant was charged with attempted murder and aggravated battery with a firearm in connection with the shooting of Derrick Curry. At trial, Curry testified that "some guys just started shooting at him" while he was walking to the bus stop on the evening of January 17, 2013. Curry turned and ran, but a bullet struck his leg. Curry got up, knocked on a window, and saw someone peek outside. Since he did not think anyone would let him in, he kept running, until he collapsed a block away. Curry did not know who shot him.

¶ 5 Destiny Hunter, who was familiar with defendant from school, testified that she was in front of her house with some friends just before the shooting. Destiny saw defendant and two other boys standing across the street. Destiny recognized defendant's face and blue arm cast. After defendant pointed a gun toward Destiny, she and her friends went inside. Destiny did not see the shooting, but as she was going inside, she heard gunshots coming from the direction where defendant was standing. Destiny identified defendant in a physical lineup the next day.

¶ 6 Destiny's mother, Tamara Hunter, testified that when she heard Destiny and her friends at the front door, she looked out her window and saw defendant standing across the street with two other boys. Tamara recognized defendant, who attends school with Destiny, from his braids

and blue cast. When Tamara opened the door for Destiny and her friends, she saw sparks coming from defendant's gun and heard several gunshots. A man then knocked on the back door of her house, said he had been shot, kept running, and fell down on the next block. Tamara identified defendant in a physical lineup the next day.

¶ 7 Defendant's mother Tammy Crawford testified that defendant was at home the entire evening, watching television with the family. She also testified that defendant wore a brace on his arm at that time.

¶ 8 The trial court found defendant not guilty of attempted murder but guilty of aggravated battery based on personal discharge of a firearm. The trial court sentenced defendant to eight and a half years in prison, with credit for 710 days in presentence custody. The trial court also imposed various monetary assessments totaling $614, with $35 to be offset by defendant's pretrial custody credit.

¶ 9 At the time of defendant's prosecution, section 5-130 required that all juveniles age 15 years and older be automatically transferred to adult court when they were charged with certain offenses, including aggravated battery based on personal discharge of a firearm. 705 ILCS 405/5-130(1)(a) (West 2013). After defendant was convicted and sentenced in adult court, and while his direct appeal was pending, the General Assembly raised the age of automatic transfer from 15 years old to 16 years old. Public Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130(1)(a)). Defendant was 15 at the time of his offense, so the amendment would place him outside the reach of the automatic-transfer provision if it applies to him. The question, then, is whether the amendment applies retroactively to individuals like defendant.

¶ 10 The Illinois Supreme Court recently answered this question in *People v. Hunter*, 2017 IL 121306. The facts of *Hunter* are indistinguishable from this case. In *Hunter*, the defendant was

tried and sentenced as an adult pursuant to the automatic-transfer provision, which was later amended while his direct appeal was pending. *Id.* ¶¶ 4-8. If the amendment applied retroactively to his case, it would have placed him outside the reach of the automatic-transfer provision. See *id.* ¶ 17. But the supreme court held that it did not. *Id.* ¶ 43.

¶ 11 The supreme court reiterated in *Hunter* that it applies the United States Supreme Court's test from *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), when addressing the retroactivity of legislation. *Hunter*, 2017 IL 121306, ¶ 20. When applying the *Landgraf* test, a court should first look to whether the legislature clearly indicated the temporal reach of the amended statute. *Id.* If it did, then the legislature's expression of its intent controls, absent some constitutional problem. *Id.* If the legislature did not signal its intent, then the court looks to whether application of the statute would have "a retroactive impact." *Id.*

¶ 12 But, the supreme court noted, "Illinois courts need never go beyond the first step of the *Landgraf* analysis" because the legislature has clearly set forth the temporal reach of every amended statute. *Id.* ¶ 21. The General Assembly did so in section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014)), a "general savings clause" that has been interpreted "as meaning that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only." *Hunter*, 2017 IL 121306, ¶ 22 (quoting *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 20). In other words, if the statutory amendment itself does not indicate its temporal reach, it is "provided by default in section 4." *Id.*

¶ 13 The supreme court applied that version of the test to the amendment to section 5-130. *Id.* ¶¶ 23-36. The amendment is procedural. *Id.* ¶ 23. And as to procedural amendments, the court explained, section 4 "requires that 'the proceedings *thereafter*'—after the adoption of the new procedural statute—'shall conform, so far as practicable, to the laws in force at the time of such

proceeding.'" *Id.* ¶ 31 (quoting 5 ILCS 70/4)). Section 4 thus "contemplates the existence of proceedings after the new or amended statute is effective to which the new procedure could apply." *Id.* But, the court concluded, only trial-court proceedings are "capable of conform[ing] to the amended statute." *Id.* ¶¶ 27-28, 32-33. Hence, if the trial-court proceedings were complete at the time the amendment took effect, and the appellate court does not find reversible error that requires a remand to the trial court anyway, there are no further proceedings in the case to which the amendment could retroactively apply. *Id.* ¶¶ 32-33. To hold that the amended statute applied retroactively, as it were, on direct appeal—or in other words, that it created an independent basis for a remand—would "effectively creat[e] new proceedings for the sole purpose of applying a procedural statute that postdates [the defendant's] trial and sentence." *Id.* ¶ 33. The supreme court rejected this result as inconsistent with the language of section 4, and also noted its "grave concerns" about the "waste of judicial resources" it would cause. *Id.* ¶¶ 33, 36.

¶ 14 Lastly, the supreme court reconciled this holding with its decision in *Howard*, 2016 IL 120729, in which the court had held that the amendment applied retroactively to "ongoing proceedings" in "pending case[s]." *Hunter*, 2017 IL 121306, ¶ 30; *Howard*, 2016 IL 120729, ¶¶ 28, 31. The court clarified that by a "pending case," it had meant "a case in which the trial court proceedings had begun under the old statute [*i.e.*, before the amendment in Public Act 99-258 took effect] but had not yet concluded." *Hunter*, 2017 IL 121306, ¶ 30. And by "ongoing proceedings," it had meant "proceedings thereafter," within the meaning of section 4, in which the new procedure could be applied—in a word, further proceedings in the trial court. *Id.*

¶ 15 Here, *Hunter*, not *Howard*, is directly on point. As in *Hunter*, defendant's direct appeal was already pending when the automatic-transfer provision at issue was amended, and we have found no independent basis to remand the case to the trial court for further proceedings. Because

the amended automatic-transfer provision does not apply retroactively to defendant's case, he was properly tried and sentenced in adult court. We affirm his conviction and sentence.

¶ 16 Next, defendant contends that the trial court erred in failing to give him $5 per day of presentence custody credit against four assessments that he argues qualify as fines: a $15 court automation assessment (705 ILCS 105/27.3a(1) (West 2014)), a $15 document storage assessment (705 ILCS 105/27.3c(a) (West 2014)), a $25 court services assessment (55 ILCS 5/5-1103 (West 2014)), and a $2 State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2014)). Defendant thus seeks to offset an additional $57 against his presentence custody credit.

¶ 17 For each day served in presentence custody, a defendant is entitled to a $5 credit to be applied against the fines imposed by the circuit court. 725 ILCS 5/110-14(a) (West 2014); *People v. Jones*, 223 Ill. 2d 569, 580 (2006). Because a defendant cannot forfeit this credit, it may be raised for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008); *People v. Woodard*, 175 Ill. 2d 435, 457–58 (1997). The propriety of the trial court's imposition of fines and fees is a matter of statutory interpretation, which we review *de novo*. *Caballero*, 228 Ill. 2d at 82.

¶ 18 Fines and fees are distinguished based on their purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee is a "charge for labor or services, especially professional services." *Jones*, 223 Ill. 2d at 582 (quoting Black's Law Dictionary 647, 664 (8th ed. 2004)). An assessment "is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution." *Id.* at 600; *Graves*, 235 Ill. 2d at 250 (fees intended to "recoup" expenses "incurred in prosecuting the defendant"). In contrast, a fine is punitive, "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." *Id.* (quoting *Jones*, 223 Ill. 2d

at 581). The statutory label applied to a charge is "strong evidence" of its proper characterization as a fine or a fee, but it "do[es] not control where the purpose of the charge contradicts that label." *Id.* at 251; *Jones,* 223 Ill. 2d at 599.

¶ 19 Defendant relies principally on *Graves* as support for his contention that the assessments at issue are fines. In *Graves*, 235 Ill. 2d at 248, the defendant was convicted of possession of a stolen motor vehicle and ordered to pay various assessments, including a $10 assessment used to finance the county mental health and drug courts (55 ILCS 5/5-1101(d-5) (West 2006)) and a $5 assessment used to finance the county youth diversion program and peer court (*id.* § 5/5-1101(e)). The supreme court held that these assessments, which were both labeled as fees in the statute, were actually fines. *Graves*, 235 Ill. 2d at 252. As the supreme court observed, "neither [defendant's] criminal offense nor his prosecution involved the resources of the programs financed by the mental health court and youth diversion/peer court fees." *Id.* Thus, the assessments did not "compensate the state for the cost of prosecuting defendant," and for that reason, they were fines rather than fees. *Id.*

¶ 20 We agree with the State that the assessments at issue here are distinguishable from those in *Graves*. Graves's assessments were fines because they subsidized courts and court initiatives that were not utilized in his case. See *id.* In contrast, as the State notes, the assessments at issue here all reimburse either the circuit court where defendant was prosecuted, the sheriff's office, or the State's Attorney's office for expenses they incur, as a matter of course, in every criminal prosecution.

¶ 21 First, the $15 court automation assessment is intended to "defray the expense" of "establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court." 705 ILCS 105/27.3a(1). Before *Graves*, we held that this assessment is a fee

because it is "compensatory and a collateral consequence of defendant's conviction[.]" *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (1st Dist. 2006). Defendant argues that *Tolliver* is no longer good law because *Graves* narrowed the definition of a compensatory charge. Under *Graves*, a fee must compensate the state for a cost incurred "as a result of prosecuting" the defendant. See 235 Ill. 2d at 250. Defendant argues that the assessment does not satisfy this requirement because the circuit court's automated record keeping system did not "result" from his prosecution, but is rather a general "component" of the court system as a whole.

¶ 22 Defendant reads *Graves*'s definition of a compensatory charge too narrowly. *Graves* does not hold, as defendant argues, that any assessment used to "finance[ ] a component of the court system" is necessarily a fine. Rather, *Graves* teaches that, when a defendant is forced to subsidize a state expense to which his conduct and prosecution did not contribute, then the defendant is being penalized for committing a crime. But every prosecution contributes, in various ways, to the marginal cost of operating the circuit court, including the cost of maintaining adequate records of court proceedings.

¶ 23 Indeed, unlike the mental health and youth programs subsidized in *Graves*, the circuit court's record keeping systems are utilized in every proceeding as a matter of course. Thus, even after *Graves*, we adhere to our holding in *Tolliver* that the assessment is a fee. 363 Ill. App. 3d at 97. See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the automation fee was a fee, not a fine).

¶ 24 We reach the same conclusion regarding the $15 document storage assessment, which is intended to "defray the expense" of "establishing and maintaining" "a document storage system" in the circuit court, including the expense of converting records to electronic format. 705 ILCS 105/27.3c. Defendant argues that this assessment is a fine because it pays for "ministerial" rather

than "prosecutorial" functions of the court. Again, defendant construes *Graves*'s definition of a compensatory fee too narrowly. Like the court automation assessment, the document storage assessment compensates the counties for general operating costs routinely incurred by the circuit court in every criminal prosecution. Thus, it is a fee. See *Heller*, 2017 IL App (4th) 140658, ¶ 74 (document storage fee was fee, not fine).

¶ 25 The same reasoning applies to the $25 court services assessment. The statute requires that "[a]ll proceeds from this fee must be used to defray court security expenses incurred by the sheriff in providing court services." 55 ILCS 5/5-1103. Notably, although this assessment may be imposed in "traffic, conservation, and ordinance cases" as well as in criminal cases, the statute expressly prohibits the imposition of this charge in a noncriminal case that was resolved without a court appearance by the defendant. See *id*. This provision makes clear that the assessment is intended to be compensatory: it applies only when the sheriff has actually provided court security services during proceedings in the defendant's case. To be sure, court security is a necessary and routine expense in every criminal prosecution, and defendant's case, like any other, contributed to the marginal cost of providing it. Because this assessment compensates the sheriff for those costs, it is a fee.

¶ 26 Lastly, the $2 State's Attorney records automation assessment is intended to "discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems," including the cost of "hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/4-2002.1(c). In numerous cases, we have held that that this assessment is a fee. See, *e.g.*, *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 143-44 (holding that assessment not subject to *ex post facto* concerns because it is a fee); *People v. Reed*,

2016 IL App (1st) 140498, ¶ 16; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30.

¶ 27 In *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, however, a panel of this court disagreed and held, for the first time, that the assessment is a fine. The panel reasoned that the assessment is not a compensatory fee, within the meaning of *Jones* and *Graves*, because the costs of developing and maintaining automated record keeping systems are not "associated with prosecuting a particular defendant." *Id.* ¶¶ 50, 56.

¶ 28 We respectfully disagree with *Camacho*. Like the circuit court, the State's Attorney's office requires adequate record keeping systems; and since such systems are expected to be used in every case, as a matter of routine, the costs associated with them are general operating costs that are fairly understood to be shared by all criminal prosecutions. The assessment compensates the State's Attorney's office for some of these costs and therefore is a fee. We would note that several courts have expressed disagreement with *Camacho* and followed the weight of authority in holding that the State's Attorney Records Automation fee is, in fact, a fee. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 76; *People v. Glover*, 2017 IL App (4th) 160586, ¶ 55; *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 22.

¶ 29 In sum, for the reasons given above, we affirm defendant's conviction, sentence, and monetary assessments.

¶ 30 Affirmed.