

No. 1-15-0239

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. 13 CR 17503
)	
TYRESE ROLAND,)	Honorable
)	John Joseph Hynes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* We modify defendant’s fines and fees order, but affirm the judgment in all other respects.

¶ 2 Following a bench trial, defendant Tyrese Roland was found guilty of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced to five years’ imprisonment. On appeal, defendant’s challenges the fines and fees order imposed by the trial court against him. We modify his fines and fees order, but affirm his judgment in all other respects.

¶ 3 Defendant was charged with one count of being an armed habitual criminal, two counts of unlawful use of a weapon by a felon and two counts of aggravated unlawful use of a weapon.

¶ 4 At trial, Chicago police sergeant Tyrone Pendarvis testified that, on August 29, 2013, he was assisting in the execution of a search warrant on a second-floor apartment located on the 4100 block of South Indiana Avenue. As Pendarvis entered the residence, he observed multiple men, including defendant, run from their locations out the rear of the residence. Pendarvis followed defendant to a landing which had stairs leading up to a third floor and down to the first floor. Pendarvis observed defendant run up the stairs to the third floor, stop at the landing and drop a firearm out of an open window. Pendarvis continued chasing defendant and eventually apprehended him on the third floor. Chicago police officer Marcus Duncan searched garbage cans outside the apartment building located below the window and found a loaded firearm. Duncan showed the firearm to Pendarvis, who identified it as the one he saw defendant drop. The State introduced certified copies of conviction, showing defendant had been convicted of aggravated battery in case number 11 CF 1214 and manufacture or delivery of a controlled substance in case number 09 CF 2256.

¶ 5 The trial court found defendant guilty of all five counts. It subsequently vacated the armed habitual criminal count, merged the remaining counts and sentenced defendant to five years' imprisonment for unlawful use of a weapon by a felon. It also assessed \$479 in fines and fees against him. This appeal followed.

¶ 6 Defendant contends that the trial court improperly imposed certain monetary assessments against him and failed to give him \$5 per day of presentence custody credit against other

monetary assessments which, he argues, qualified as fines. Although defendant concedes he did not challenge these assessments in the trial court, a reviewing court may modify a fines and fees order without remanding the matter to the trial court under Illinois Supreme Court Rule 615(b)(1) (*People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22), and “a defendant may request presentence [custody] credit for the first time on appeal.” *People v. Lake*, 2015 IL App (3d) 140031, ¶ 31. 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.

¶ 7 Defendant first argues, and the State correctly concedes, that the trial court improperly imposed against him a \$5 electronic citation assessment (705 ILCS 105/27.3e (West 2012)) and a \$2 public defender records automation assessment (55 ILCS 5/3-4012 (West 2012)).

¶ 8 The \$5 electronic citation assessment applies only to defendants “in any traffic, misdemeanor, municipal ordinance, or conservation case.” 705 ILCS 105/27.3e (West 2012). Here, defendant was convicted of unlawful use of a weapon by a felon, a felony. See 720 ILCS 5/24-1.1(a), (e) (West 2012). Therefore, the trial court improperly imposed this assessment, and we vacate it.

¶ 9 Although defendant initially argues that he should receive presentence custody credit toward his \$2 public defender records automation assessment, the State notes that defendant was represented by private counsel, not the public defender, and thus the assessment is inapplicable to his situation. In defendant’s reply brief, he agrees with the State. See *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30 (finding that, where the defendant “was represented by private counsel

during trial,” the public defender records automation assessment was “inapplicable”). Therefore, the trial court improperly imposed this assessment, and we vacate it.

¶ 10 Defendant next argues, and the State correctly concedes, that he is entitled to \$5 per day of presentence custody credit against the following assessments: a \$10 mental health court assessment (55 ILCS 5/5-1101(d-5) (West 2012)), a \$5 youth diversion program assessment (55 ILCS 5/5-1101(e) (West 2012)), a \$5 drug court assessment (55 ILCS 5/5-1101(f) (West 2012)), a \$50 court system assessment (55 ILCS 5/5-1101(c) (West 2012)), a \$15 state police operations assessment (705 ILCS 105/27.3a(1.5) (West 2012)), and a \$30 children’s advocacy center assessment (55 ILCS 5/5-1101(f-5) (West 2012)).

¶ 11 A defendant is entitled to a \$5 credit for each day incarcerated toward the fines levied against him. 725 ILCS 5/110-14(a) (West 2012). Fines and fees are distinguished based on their purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee is an assessment intended to “ ‘recoup expenses incurred by the state,’ or to compensate the state for some expenditure incurred in prosecuting the defendant.” *Id.* (quoting *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). An assessment “is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant’s prosecution.” *Jones*, 223 Ill. 2d at 600. In contrast, a fine is punitive, “ ‘a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.’ ” *Graves*, 235 Ill. 2d at 250 (quoting *Jones*, 223 Ill. 2d at 581). Although an assessment may be statutorily labeled as a “fee,” it nevertheless may still be a “fine,” despite the language used by our legislature. *Id.* Here, defendant accumulated 737 days of presentence custody credit, and thus, he is entitled to a maximum \$3,685 credit toward his eligible fines.

¶ 12 The mental health court assessment, youth diversion program assessment, drug court assessment, court system assessment, state police operations assessment and children's advocacy center assessment are fines subject to presentence custody credit. See *Graves*, 235 Ill. 2d at 251-55 (mental health court and youth diversion program assessments are fines); *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 138 (drug court assessment is a fine); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (court system assessment is a fine); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (state police operations assessment is a fine); *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 107 (children's advocacy center assessment is a fine). Therefore, defendant must receive \$5 per day of presentence custody credit toward these fines.

¶ 13 Defendant next argues that he must also receive \$5 per day of presentence custody credit against the following assessments: a \$15 clerk automation assessment (705 ILCS 105/27.3a(1) (West 2012)), a \$15 clerk document storage assessment (705 ILCS 105/27.3c(a) (West 2012)), and a \$2 state's attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2012)). Defendant asserts these assessments are fines because they do not seek to reimburse the state for the costs of prosecuting a particular defendant. The State disagrees, arguing they are fees because they seek to reimburse the state for the costs of prosecuting a particular defendant.

¶ 14 In *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that the clerk automation assessment and clerk document storage assessment are both fees. The court reasoned that the assessments are compensatory in nature and merely a collateral consequence of the defendant's conviction. *Id.*

¶ 15 Defendant acknowledges the holding of *Tolliver*, but asserts that *Tolliver* predates *People v. Graves*, 235 Ill. 2d 244, 250 (2009), wherein our supreme court held that, to be correctly designated as a fee, an assessment must reimburse the State for a cost that was incurred in the prosecution of the defendant. Defendant thus asserts that *Tolliver*'s analysis is not controlling or persuasive. However, *Tolliver* used the same reasoning as later employed by our supreme court in *Graves*, finding the assessments represented a portion of the overall costs incurred in the prosecution of a defendant. *Tolliver*, 363 Ill. App. 3d at 97. Furthermore, cases following *Graves* have recognized the clerk automation assessment and clerk document storage assessment as fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 61-64 (recognizing clerk automation assessment and clerk document storage assessment as fees); *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 28-30 (same). Therefore, defendant is not entitled to presentence custody credit toward these fees.

¶ 16 Lastly, concerning the state's attorney records automation assessment, in *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65, this court held the assessment is a fee because it is intended to reimburse the state for expenses related to automated record-keeping systems. See also *People v. Reed*, 2016 IL App (1st) 140498, ¶ 16 (finding the state's attorney records automation assessment is a fee); but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (finding the state's attorney records automation assessment is a fine because it does not compensate the state for costs associated in prosecuting a particular defendant). As we agree with *Bowen* and *Reed*, we find defendant is therefore not entitled to presentence custody credit toward the state's attorney records automation fee.

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¶ 17 In sum, we order the clerk of the circuit court to (1) vacate defendant's \$5 electronic citation assessment and \$2 Public Defender records automation assessment, and (2) award defendant \$5 per day of presentence custody credit toward his \$10 mental health court fine, \$5 youth diversion program fine, \$5 drug court fine, \$50 court system fine, \$15 state police operations fine and \$30 children's advocacy center fine, resulting in a total credit in the amount of \$115.

¶ 18 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 19 Affirmed as modified.