2017 IL App (1st) 150240-U

No. 1-15-0240

Order filed August 4, 2017

Fifth Division

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. 13 CR 17843
	)	
GREGORY MOORE,	)	Honorable
	)	Lawrence Edward Flood,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We modify the mittimus to reflect the correct offense of which defendant was convicted and correct the fines and fees order. Judgment affirmed in all other respects.

¶ 2 Following a jury trial, defendant Gregory Moore was convicted of Class 2 delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)) and sentenced as a Class X offender to seven years' imprisonment. On appeal, defendant contends that his mittimus should be amended

to reflect the correct offense of which he was convicted and challenges certain fines and fees imposed by the trial court. We affirm as modified.

¶ 3 Defendant was charged with one count of delivery of a controlled substance within 1000 feet of a school (720 ILCS 570/407(b)(2) (West 2012)). Prior to his jury trial, the State amended the indictment, striking the language regarding "within 1,000 feet of a school." The evidence at trial established that, on July 5, 2013, defendant sold two small bags of suspect narcotics to Officer Adrienne Carter. The substance in the bags tested positive for .2 grams of heroin. A jury found defendant guilty of delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)). The trial court sentenced him to seven years' imprisonment and imposed $1,534 of mandatory fines, fees, and costs. Defendant was credited with 501 days of presentence custody.

¶ 4 On appeal, defendant contends that his mittimus should be amended to reflect the correct offense of which he was convicted. He also contends that the trial court erroneously assessed one fee, and that a number of other fines and fees should be offset by presentence credit.

¶ 5 Initially, defendant concedes that he did not challenge these assessments in the trial court. Because the State does not argue forfeiture on appeal, it has forfeited the claim that the issues raised by defendant are forfeited. *See People v. Whitfield*, 228 Ill. 2d 502, 509 (2007) (the State may forfeit the claim that an issue defendant raises is forfeited if the State does not argue forfeiture on appeal). Moreover, a corrected mittimus may be issued at any time and a reviewing court may correct a mittimus without remanding to the trial court. *People* v. *Carlisle*, 2015 IL App (1st) 131144, ¶ 84. Similarly, a defendant may request presentence credit for the first time on appeal. *People v. Lake*, 2015 IL App (3d) 140031, ¶ 31. We 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, ¶22.

¶ 6 Defendant first argues, and the State agrees, that his mittimus should be amended to reflect a conviction for the charge of which the jury found him guilty: Class 2 delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)). The mittimus currently indicates that defendant was convicted of the pre-amended charge of Class 1 delivery of a controlled substance within 1000 feet of a school (720 ILCS 570/407(b)(2) (West 2012)). Whether a mittimus should be corrected is a question of law we review *de novo*. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 86. This court has the authority, under Illinois Supreme Court Rule 615(b), to order the clerk to correct the mittimus without remand. Accordingly, we order the clerk of the circuit court to correct defendant's mittimus to reflect his conviction for Class 2 delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)). See *People v. Harris*, 2012 IL App (1st) 092251, ¶ 39 (ordering that a defendant's mittimus be corrected to reflect the statutory citation of the charge he was convicted of).

¶ 7 Defendant next contends, and the State agrees, that the trial court erroneously assessed the $5 electronic citation fee (720 ILCS 105/27.3e (West 2012)) against him. We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Glass*, 2017 IL App (1st) 143551, ¶21. The statute authorizing this fee dictates that it shall be paid by a defendant "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." 720 ILCS 105/27.3e (West 2012). As defendant was convicted of a felony offense, this fee was erroneously assessed against him. Accordingly, we vacate the $5

electronic citation fee. *See People v. Brown*, 2017 IL App (1st) 142877, ¶ 68 (vacating an electronic citation fee where defendant was convicted of a felony.)

¶ 8 Defendant next argues that certain "fees" assessed against him operate as "fines" and should therefore be offset by his presentence incarceration credit. 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 2012). The credit for presentence incarceration can only reduce fines, not fees." *People v. Jones*, 233 Ill. 2d 569, 599 (2006). 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*.

¶ 9 Defendant contends, and the State agrees, that he is entitled to presentence credit for the $10 mental health court assessment (55 ILCS 5/5-1101 (d-5) (West 2012)), the $5 youth diversion/peer court assessment (55 ILCS 5/5-1101(e) (West 2012)), the $5 drug court assessment (55 ILCS 5/5-1101(f) (West 2012)), the $30 children's advocacy assessment (55 ILCS 5/5-1101(f-5) (West 2012)), the $15 state police operations fee (705 ILCS 105/27.3.a(1.5) (West 2012), and the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012). This court has held that each of these assessments is a fine which may be offset by presentence credit. *People v. Alvidrez*, ¶ 35 (awarding presentence credit for mental health court, youth advocacy/peer court, drug court, and children's advocacy assessments); *People v. Bingham*, 2017 IL App (1st)

143150, ¶ 40 (awarding presentence credit for the state police operations and court system fees). As defendant was incarcerated for 501 days before sentencing, and is therefore entitled to $2,505 of pre-sentence credit, these assessments are completely offset by defendant's presentence credit.

¶ 10 Defendant next argues that the felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)) operates as a fine and should be offset by his presentence credit. Defendant argues that the fact that the statute authorizes higher fees for felonies than misdemeanors indicates that the assessment is punitive rather than compensatory in nature. He also cites *Graves* for the proposition that assessments "only imposed after conviction" are more likely to be a fines. *People v. Graves*, 235 Ill. 2d 244, 251 (2009). However, this court has held that the felony complaint assessment is a fee as it is compensatory, and not punitive, in nature. *People v. Bingham*, 2017 IL App (1st) 143150. Accordingly, the $190 felony complaint assessment shall not be offset by defendant's presentence credit.

¶ 11 Defendant next contends that the clerk's $15 automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2012)) and $15 document storage fee (705 ILCS 105/27.3c(a) (West 2012)) assessed against him are actually fines, and should be offset by his presentence credit. However, this court has held that these charges are " 'compensatory and a collateral consequence' " of a defendant's conviction and, therefore, are fees rather than fines. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (quoting *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006)). Defendant acknowledges that, in *Tolliver*, this court held that these assessments are fees, but argues *Tolliver* was decided before *People v. Graves*, 235 Ill. 2d 244 (2009), and is therefore unpersuasive. We disagree. In *Graves*, our supreme court held 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.) *Graves*, 235 Ill. 2d at 250 (quoting *People v. Jones*, 223 Ill. 2d 569, 600 (2006)). In *Tolliver*, this court held that a fee is "a charge for labor or services, and is a collateral consequence of the conviction which is not punitive, but instead, compensatory in nature." *Tolliver*, 363 Ill. App. 3d at 97. Accordingly, the $15 document storage fee and $15 automation fee shall not be offset by defendant's presentence credit.

¶ 12 Defendant next contends that he is entitled to presentence credit against both the $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)) and the $2 state's attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)) assessed against him. 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. Reed*, 2016 IL App (1st) 140498 ¶¶16-17 (holding that the assessments were fees because both the State's Attorney and Public Defender would have used their respective office records systems in the course of prosecuting and defending the defendant.) See also *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65 (finding the language of the statutes authorizing each fee to be nearly identical and finding no reason to distinguish between them.) C*ontra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56. Accordingly, neither of the records automation fees are offset by defendant's presentence credit.

¶ 13 Defendant next challenges the $25 Court Services fee (55 ILCS 5/5-1103 (West 2012)) assessed against him. This fee is charged to "defray[] court security expenses incurred by the sheriff in providing court services." 55 ILCS 5/5-1103 (West 2012). This court has previously determined that this assessment is fee because it is "compensatory and a collateral consequence

of defendant's conviction." *Tolliver*, 363 Ill. App. 3d at 97. Accordingly, the $25 court services fee shall not be offset by defendant's presentence credit.

¶ 14 For the forgoing reasons, we vacate the $5 electronic citation fee assessed against the defendant. We find the $10 mental health court assessment, $5 youth diversion/peer court assessment, $5 drug court fine, $30 children's advocacy center fee, the $15 state police operations fee, and the $50 court system fee are offset by defendant's monetary credit for presentence incarceration. The $190 felony complaint fee, the county clerk's $15 document storage fee, the clerk's $15 automation fee, the $2 public defender records automation fee, the $2 state's attorney records automation fee, and the $25 court services fee are not offset by credit. Pursuant to Illinois Supreme Court Rule 615(b)(1), we order the clerk of circuit court to correct the mittimus and fines and fees order accordingly. We affirm the judgment in all other respects.

¶ 15 Affirmed as modified.